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# **Proposals on the Constitution 1971-1978**

**Collation  
by the  
Canadian Intergovernmental  
Conference Secretariat**







20

PROPOSALS ON THE CONSTITUTION

1971 - 1978

Collation  
by the  
Canadian Intergovernmental Conference Secretariat

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## FOREWORD

This volume is a collation of proposals and recommendations related to the constitution of Canada which emerged during the period 1971-1978, and was originally prepared by the Canadian Intergovernmental Conference Secretariat to assist the discussions of the federal-provincial First Ministers' Conference on the Constitution held in the Fall of 1978. The First Ministers decided at that meeting that this material should be published by the CICS so that it might be more readily available to those who have an interest in the constitutional question.

An attempt has been made to include all major constitutional proposals submitted by governments beginning with the 1971 Victoria Charter, together with appropriate references to the British North America Act. The main source documents included, with their abbreviated titles as used in the text shown to the right, are the following:

British North America Acts 1867-1975	B.N.A. Act
Canadian Constitutional Charter, 1971	Victoria Charter (1971)
Special Joint Committee of the Senate and of the House of Commons on the Constitution of Canada, 1972, Final Report	Special Joint Committee on the Constitution (1972)
Draft Proclamation from Prime Minister's letter to Premiers, March 31st, 1976, and extracts from letter	Draft Proclamation (1976)
Letter from Premier of Alberta to Prime Minister, October 14th, 1976, re Premiers' Conferences in August and October of that year	Premiers' Conferences (1976)
Draft Resolution from Prime Minister's letter to Premiers dated January 19th, 1977, and extracts from letter	Draft Resolution (1977)
Constitutional Amendment Bill, text and explanatory notes, June 1978	Bill C-60 (1978)
Communiqué, Regina Premiers' Conference, August 1978, and accompanying letter from Premier of Saskatchewan to Prime Minister	Regina Premiers' Conference (1978)
Report to Parliament of the Special Joint Committee of the Senate and the House of Commons, October 1978	Lamontagne/MacGuigan Report (1978)

Federal and Provincial proposals  
presented during First Ministers'  
Conference on the Constitution,  
October 30-31 and November 1, 1978

Constitutional Conference  
(1978)

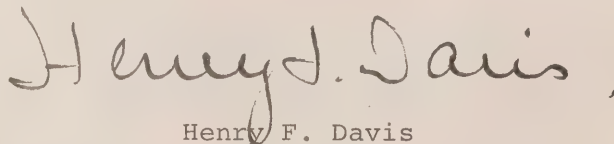
Other documents and official correspondence have been included as well where relevant.

There exists additional documents of a governmental nature related to recent Canadian constitutional developments which could not be included in this collation because of their format. Two examples are the May 1977 and April 1978 reports of the Western Premiers' Task Force on Constitutional Trends which can be obtained through the CICS. Copies of the full text of most documents used for this volume are also available from the CICS.

The Table of Contents shows the titles under which the material extracted from the sources has been grouped. Sources consulted are listed under each title and the material is presented in chronological order.

Since this volume is a CICS document we assume responsibility for any errors which might have been made in reproducing the source material.

If new government proposals and material on the constitution emerge in the near future, consideration will be given to the publication of a second volume of the collation with the agreement of governments.



Henry F. Davis  
Secretary

December 1978

Canadian Intergovernmental Conferences

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## CONSTITUTIONAL REVISION AND PATRIATION PROCEDURE



# I. CONSTITUTIONAL REVISION AND PATRIATION PROCEDURE

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## B.N.A. ACT

No reference

## VICTORIA CHARTER

Text of federal proposal regarding the  
procedure for patriation of the constitution accepted  
by the Constitutional Conference of June 1971

. . .

### Introduction

The Conclusions of the Working Session of the Constitutional Conference on February 8-9 stated as follows:

#### "Patriation of the Constitution

2. The Constitutional Conference agreed on a procedure to be undertaken in Canada at a very early date in order to bring home the Constitution and to transfer to the people of Canada, through their elected representatives, the exclusive power to amend and to enact constitutional provisions affecting Canada. This procedure would involve:

- (a) Agreement among the governments as to changes and procedure.
- (b) Approval of a resolution in the usual way, by legislatures plus the two Houses of Parliament, authorizing the issuance of a proclamation by the Governor General to contain the amendment formula and whatever changes are agreed upon.
- (c) Recommendation that the British Parliament legislate to:

- (i) recognize the legal validity of the Canadian proclamation and its provisions;
  - (ii) provide that no future British law should have application to Canada; and
  - (iii) make any consequential repeal or amendment of British statutes affecting the Canadian Constitution.
- (d) Issuance of the proclamation by the Governor General on a date to coincide with the effective date of the British law."

Thus, once the Constitutional Conference agrees on the texts of specific constitutional changes, there will be three major steps to be taken to achieve patriation: approval of the changes by legislatures of the provinces and by the Houses of the federal Parliament; legislation by the United Kingdom Parliament; and the issue of a Proclamation by the Governor General.

#### Resolutions of Approval

It is desirable that the main content and operative words of the resolutions submitted to the provincial and federal legislatures should be as uniform as possible. If there were to be wide variation, inconsistencies of language might result which could give rise at a later stage to questions as to whether there had in fact been consent to the same effect by the various legislative bodies. To avoid this difficulty, it would seem preferable that prior agreement be reached (at the Victoria meeting if possible) on an appropriate general form which first ministers could use in submitting the resolutions to their legislative bodies for approval. Essentially, the resolutions should approve the issuance of a Proclamation to bring into effect the Canadian Constitutional Charter as part of our Constitution. Perhaps a wording such as the following would be appropriate:

"... that this House [Assembly, etc.] approve the issuance of a Proclamation by the Governor General, proclaiming the following provisions respecting the Constitution of Canada to come into force on a date to be fixed by that Proclamation."

This would not of course preclude the inclusion of such other material in the resolutions, not inconsistent with this approval, as is appropriate for each legislative body. Because of certain procedural requirements the resolutions submitted to the Senate and House of Commons should probably contain the text of the Proclamation itself as well as the Charter.

### The United Kingdom Enactment

After resolutions of approval have been adopted by legislative bodies in Canada, the British Parliament would be requested to pass appropriate legislation. The British enactment would refer to the approval expressed by legislative bodies in Canada for such constitutional changes, and would specifically recognize the validity of the Proclamation (containing the Canadian Constitutional Charter) to be issued subsequently by the Governor General. This recognition of validity is essential to remove any possibility of challenge in some court of law at some time concerning the legal and constitutional basis for the new provisions. The U.K. legislation would also terminate all remaining formal legislative authority which the British Parliament now has with respect to Canada.

Discussions will be held with the British government before the Victoria Conference to be sure that there are no legal or procedural problems that could cause difficulty and to ensure that preparations for this aspect of patriation may be effected as smoothly as possible.

Achievement of patriation will also involve the repeal of parts of the Statute of Westminster, 1931 as it applies to Canada. The provisions requiring repeal are section 4 as it applies to Canada, section 7 (1), and the references to Newfoundland as a separate Dominion in sections 1 and 10 (3). These changes

in the Statute of Westminster, 1931 have been provided for in the text relating to Modernization of the Constitution (already distributed) which will form part of the Canadian Constitutional Charter to be given effect by the Governor General's Proclamation.

### The Proclamation of the Governor General

As agreed in February, the final stage would be the Proclamation of the Governor General, issued in his name and under the Great Seal of Canada.

The Proclamation, after making appropriate reference to the changes as having been effected by the representatives of the Canadian people, would proclaim the Canadian Constitutional Charter which would form an Annex to it. The Charter and the United Kingdom statute would be designed to come into force at the same time.

### Result

From the day of the coming into force of these instruments the Constitution of Canada (as modified thereby) will continue as before, but it will be fully amendable in Canada by the new amending procedure and there will no longer be any formal authority of the United Kingdom Parliament to alter it in any respect.

Depending on agreement on the proposals to be made on this subject, a final stage, which would require some time to accomplish, would be the consolidation of the various constitutional documents into a single, comprehensive statement of the legal provisions that constitute the "Constitution of Canada".

## SPECIAL JOINT COMMITTEE ON THE CONSTITUTION (1972)

### *Chapter 1—Constitutional Imperatives*

1. Canada should have a new and distinctively Canadian Constitution, one which would be a new whole even though it would utilize many of the same parts.
2. A new Canadian Constitution should be based on functional considerations, which would lead to greater decentralization of governmental powers in all areas touching culture and social policy and to greater centralization in powers which have important economic effects at the national level. Functional considerations also require greater decentralization in many areas of governmental administration.

### *Chapter 4—Patriation of the Constitution*

3. The Canadian Constitution should be patriated by a procedure which would provide for a simultaneous proclamation of a new Constitution by Canada and the renunciation by Britain of all jurisdiction over the Canadian Constitution.

## DRAFT PROCLAMATION (1976)

In his letter to the Premiers accompanying the Draft Proclamation, the Prime Minister of Canada stated:

Mr. Bourassa advised me in our conversation on March 5th that the things he considers to be necessary might well go beyond what we, in the federal government, have understood to be involved in the present exercise. In part they might relate to the distribution of powers. I advised him that the Government of Canada, for its part, feels that it can go no further as part of this exercise than the constitutional guarantees that are embodied in the document and that indeed even they might find difficulty of acceptance in their present form. To go further would involve entry upon the distribution of powers, with the consequences to which I have referred. We must, then, consider three alternatives that are open to us in these circumstances.

Let us begin with the simplest alternative. The Government of Canada remains firmly of the view that we should, as a minimum, achieve "patriation" of the B.N.A. Act. It is not prepared to contemplate the continuation of the anomalous situation in which the British Parliament retains the power to legislate with respect to essential parts of the constitution of Canada. Such "patriation" could be achieved by means of an Address of the two Houses of the Canadian Parliament to the Queen, requesting appropriate legislation by the British Parliament to end its capacity to legislate in any way with respect to Canada. Whereas unanimity of the federal government and

the provinces would be desirable even for so limited a measure, we are satisfied that such action by the Parliament of Canada does not require the consent of the provinces and would be entirely proper since it would not affect in any way the distribution of powers. In other words, the termination of the British capacity to legislate for Canada would not in any way alter the position as between Parliament and the provincial legislatures whether in respect of jurisdictions flowing from Sections 91 and 92 or otherwise.

However, simple "patriation" would not equip us with an amending procedure for those parts of our constitution that do not come under either Section 91(1) or Section 92(1) of the B.N.A. Act. To meet this deficiency, one could provide in the Address to the Queen that amendment of those parts of the constitution not now amendable in Canada could be made on unanimous consent of Parliament and the legislatures until a permanent formula is found and established. In theory this approach would introduce a rigidity which does not now exist, since at present it is the federal Parliament alone which goes to Westminster and the degree of consultation of or consent by the provinces is a matter only of convention about which there can be differences of view. In practice, of course, the federal government has in the past sought the unanimous consent of the provinces before seeking amendments that have affected the distribution of powers.

A second and perhaps preferable alternative would be to include in the action a provision that could lead to the establishment of a permanent and more flexible amending procedure. That could be done by detailing such a procedure in our Joint Address and having it included in the British legislation as an enabling provision that would come into effect when and only when it had received the formal approval of the legislatures of all the provinces. The obvious amending procedure to set forth would be the one agreed to at Victoria in application to those parts of our constitution not now amendable in Canada (Part I of the attached "Draft Proclamation"). This could be with or without modification respecting the four western provinces. (On this last point, the federal government would be quite prepared to accept the proposed modification and it is my understanding that the other provinces would equally agree if the western provinces can arrive at agreement.)

If we took the above step, we would achieve forthwith half of the objective of last April—"patriation"—and we would establish a process by which the other half—the amending procedure—would become effective as and when the provincial legislatures individually signify their agreement. Over a period of time, which I hope would not be long, we would establish the total capacity to amend our constitution under what is clearly the best and most acceptable procedure that has been worked out in nearly fifty years of effort since the original federal-provincial conference on this subject in 1927. Until full agreement and implementation had been achieved, any constitutional changes that might be needed, and which did not come under Section 91(1) or Section 92(1) or which could not otherwise be effected in Canada could be made subject to unanimous consent. This would impose an interim rigidity for such very rare requirements for amendment, but, as I have said, the practice has, in any event, been to secure unanimous consent before making amendments that have affected the distribution of powers.

A third and more extensive possibility still, would be to include, in the "patriation" action, the entirety of the "Draft Proclamation" I am enclosing. In other words the British Parliament, in terminating its capacity to legislate for Canada, could provide that all of the substance of Parts I to VI would come into effect in Canada and would have full legal force when, and only when, the entirety of those Parts had been approved by the legislatures of all the provinces. At that point, we would have, not only "patriation" and the amending procedure, but also the other provisions that have developed out of the discussions thus far. Here again, of course, until all the Provinces had approved the entire Draft Proclamation, any constitutional change which did not come under Section 91(1) or Section 92(1) would be subject to unanimous consent.

As you can see, there are several possibilities as to the course of action now to take. So far as the federal government is concerned, our much preferred course would be to act in unison with all the provinces. "Patriation" is such a historic milestone that it would be ideal if all Premiers would associate themselves with it.

But if unanimity does not appear possible, the federal government will have to decide whether it will recommend to Parliament that a Joint Address be passed seeking "patriation" of the B.N.A. Act. A question for decision then will be what to add to that action. We are inclined to think that it should, at the minimum, be the amending procedure agreed to at Victoria by all the provinces, with or without modification respecting the western provinces, and subject to the condition about coming into force only when approved by the legislatures of all the provinces as explained above."

## PREMIERS' CONFERENCES (1976)

(a) Extract from letter of October 14, 1976 from the Premier of Alberta to the Prime Minister of Canada:

### Patriation

All provinces agreed with the objective of patriation. They also agreed that patriation should not be undertaken without a consensus being developed on an expansion of the role of the provinces and/or jurisdiction in the following areas: culture, communications, Supreme Court of Canada, spending power, Senate representation and regional disparities. Later in the letter I will endeavour to give you some idea of our discussions on the above matters.

(b) Letter from the Premier of Manitoba to the Prime Minister of Canada dated October 21, 1976:

The Right Honourable Pierre E. Trudeau, P.C., Q.C., M.P.  
Prime Minister of Canada  
House of Commons  
Ottawa, Ontario  
K1A OA2

My dear Prime Minister:

I am in receipt of a letter addressed to you by the Honourable Peter Lougheed, Premier of Alberta, and written on behalf of provincial Premiers in response to your letter to them dated March 31st, 1976, on the method of domiciling the British North America Act in Canada. While most of the summary given you by Premier Lougheed is an accurate enough reflection of what was said at recent meetings of the provincial Premiers, there is a difference of opinion between Premier Lougheed and myself concerning the interpretation or recollection of two of the matters discussed at the meeting of the provincial Premiers in Toronto on October 1st and 2nd, 1976.

The Province of Manitoba agrees with the objective of patriation as being desirable even if not absolutely essential. We did not however agree that patriation should be conditioned upon a consensus being developed on an expansion of the role of the provinces in various areas. We are of the opinion that if agreement can be arrived at amongst the provinces and the Government of Canada concerning any aspect of the proposed constitution it would be desirable to link patriation with such changes. However, it is not our opinion that such changes must be made as a prerequisite to patriation. Indeed on some of the proposed substantive changes we already cannot agree that it would be desirable. I refer, for example, to the proposed change that would presume to give the provinces paramountcy in cultural matters. Manitoba's position has been one of support for concurrency much as at present. We do not see the justification for citizens as individuals or as groups being able to relate directly to either level of government only with the permission of the other in cultural matters that can be as broad and diverse as life itself.

Furthermore while Manitoba certainly does not agree with any proposed unanimity rule, we would object to any procedure permitting consensus to suffice for changes desired immediately which could then not subsequently be changed without unanimity. In our opinion the same rule should apply before and after patriation, namely, that if unanimity is required after the constitution is patriated, it should be required for changes now being requested. If consensus suffices after patriation, then consensus should be acceptable for immediate changes.

It goes without saying that I am referring here only to the position of the provinces. The federal government would, of course, want to establish its own position vis-à-vis changes desired by the provinces but not agreed to by the federal government.

I regret having to write you separately, but it would appear that there is a difference of opinion in my interpretation on the foregoing two specific subject matters dealt with by the provinces and the interpretation of Premier Lougheed.

Yours sincerely,

Edward Schreyer

cc. To all provincial Premiers

(c) Letter from the Premier of Prince Edward Island to the Prime Minister of Canada dated November 10, 1976:

The Right Honourable Pierre Elliott Trudeau  
Prime Minister of Canada  
East Block, Parliament Buildings  
Ottawa, Canada

My dear Prime Minister:

I regret that absence from my office has delayed this letter until now. Nevertheless, I would like to make you aware of comments I had made to Premier Lougheed, concerning his letter to you of October 14th outlining the position of the Provinces on the patriation of our Constitution.

In Premier Lougheed's draft letter which was sent to all Premiers for comment before sending it to you, he stated,

"They (all Provinces) also agreed that patriation should not be undertaken without a consensus being developed on an expansion of the role of the Provinces and/or jurisdiction in the following areas: Culture; Communications; Supreme Court of Canada; Spending Power; and Senate Representation."

In returning my comments to Premier Lougheed, I suggested that we should substitute the phrase, "patriation should not be undertaken without a consensus", with one indicating that patriation should incorporate those changes on which unanimous agreement is possible.

In other words, I feel that our main objective is to patriate the Constitution. If there are changes on which there is unanimous agreement or substantial agreement, those changes should be incorporated as well, but if substantial agreement is not possible we should not insist on incorporating these changes before patriation.

Premier Lougheed's letter to you was substantially the same as the draft that had been sent for comment, and did not reflect my opinion; therefore, I should like at this time for you to be aware of my views.

Yours very truly,

Alexander B. Campbell  
Premier  
Prince Edward Island

cc. To all Provincial Premiers

# BRITISH COLUMBIA PAPER ON THE CONSTITUTION OF CANADA (NOV 1976)

First, it is British Columbia's view<sup>2</sup> that patriation ought not to be undertaken without the consent of all the provinces. Even though constitutional convention might permit the Government of Canada to proceed with the first option without the unanimous consent of the provinces, for the Government of Canada to do so would, in British Columbia's view, be unwise. The act of patriation is largely symbolic and ought to be conducive to engendering national unity. Any unilateral move would lead to national disunity and unnecessary divisiveness throughout the country, and therefore be contrary to the aim and purpose of making the *British North America Act* a truly Canadian document. Moreover, if simple patriation is the option which is taken, the Bill to be passed by the British Parliament should contain a provision that until an amending formula is decided upon in Canada, unanimous consent of all the provinces would be necessary to any constitutional change affecting provincial rights or the distribution of powers.

Any consideration of an appropriate amending formula must take full account of the place which British Columbia now occupies in contemporary Canada.

(Page 4 from November 1976 British Columbia paper "What is British Columbia's Position on the Constitution of Canada")

### DRAFT RESOLUTION (1977)

In his letter of January 19, 1977 to the Premier of Alberta accompanying the Draft Resolution, the Prime Minister of Canada stated:

It seems to me that the results of the meetings of Premiers, as reflected in your letter, are, in a sense, either too much or too little. They are too much in relation to the limited exercise we embarked upon in April, 1975. That, as reflected in my letter of April 19th, 1975, was intended to accomplish "patriation" of our constitution from Britain with the amending clause agreed on at Victoria. We - the provinces and the federal government - decided deliberately to avoid the complexities of constitutional reform which had been so clearly demonstrated in the conferences, meetings and discussions from 1968 to 1971. While the very limited scope of our exercise grew somewhat in the course of discussions in 1975 and early 1976, the proposals embodied in your letter carry the exercise into new areas and even raise some aspects of the distribution of powers. This is precisely the sort of thing we had, in April 1975, sought to avoid.

If the proposals in your letter are too much in relation to the immediate exercise, they are too little in relation to constitutional reform. We got into many other aspects of the constitution in 1968-1971 and, if we are now to embark on changes in the distribution of powers and other fundamental matters, I think our review and our changes should be much more extensive than those covered in your letter of October 14th. I have made it clear on many occasions that the federal government is prepared to re-embark on a fundamental review of our constitution. We would be quite prepared to have such a process begin at a very early date if that is the general wish. The exercise since April 1975 has been based on experience, over the many years of effort in this area, which seemed to demonstrate the wisdom of trying to proceed by stages: first to "patriate" with an amending procedure that most think satisfactory; then to decide upon the changes in a document that would be totally Canadian and totally amendable by procedures to be executed entirely in Canada. The federal government is prepared to proceed by either route: action by stages, such as we have been concentrating on, or action all at once by fundamental constitutional revision.

Having said that the proposals in your letter are, in our judgment, either too much or too little, the federal government is prepared to see if agreement can be achieved on the basis of your letter, but with modifications, so that "patriation" can be effected as soon as possible. The most significant modification we would suggest is that we should not, if we are to adhere to this limited exercise, enter in any way into the distribution of powers. The federal government is quite ready to go into that problem but it is both complex and difficult. To do it partially, in the way your letter suggests, without a coherent total plan would, in our view, be a serious mistake. We have, therefore, tried to see what might reasonably be done to meet the concerns to which your letter refers, while leaving all matters of constitutional powers for comprehensive study and action at the second stage, after "patriation". So that there can be no possibility

of misunderstanding I repeat that, if the provinces now feel that this is not the right course, the federal government is ready to embark on the other route of total constitutional review. If we adopt that course, it will be essential for all of us to be willing to meet the challenge that this task will pose in as open-minded a way as possible consistent with our responsibilities, unburdened by commitments to any preconceived outcome, and constrained only by the dictates of our sense of what will best serve the interests of Canadians in all parts of Canada. In this spirit, I am convinced, lies the greatest promise of a constitution that will be Canadian in the best sense, that is to say an institutional framework for our future that will be effective and workable, yet justly and sensitively balanced as between its constituent elements. Having made these points, I return to the possibility of action in stages, with a first stage built upon the proposals in your letter.

If "patriation" can be agreed upon using the discussions of the last two years as the basis, we will need to implement it by means of a Proclamation by the Governor General and legislation by the British Parliament to terminate its powers to legislate with regard to Canada. A draft of such a Proclamation was sent to you and the other Premiers with my letter of March-31st, 1976. It has seemed to us that it might advance matters if the proposals of the federal government, in reply to your letter of October 14th, were communicated in the form of a revised Proclamation. Such a document is enclosed herewith as part of a draft of a resolution that might be placed before Parliament."

STATEMENT BY PREMIER OF ONTARIO TO TASK FORCE ON CANADIAN  
UNITY (NOVEMBER 1977)

...

The purpose of the approach that I advocate is not to tear anyone down, but to strengthen the entire fabric of Canada both in its whole and in its parts. Whatever we do, the outcome must be a more effective federal Parliament and government, capable of providing national leadership on a clearly defined list of national issues working together with highly responsive provincial legislatures and their governments.

...

## A TIME FOR ACTION (1978)

### **The process and timing of change**

These, then, are some of the major areas of change which the government believes must now be examined — by governments and the people. A question of no small importance is how best to proceed with this task, in a way that will be most likely to lead to a successful conclusion. Canadians and their governments have been talking about constitutional reform for a half century or more, and much energy has been devoted to the subject, without success. The process which is begun now must be capable of inspiring confidence that success is possible within a reasonable period of time.

In examining ways of meeting this objective, the government has been mindful of the considerable latitude which is given to Parliament by the present Constitution to make changes in those parts which pertain to our central institutions of government, including the Senate and the Supreme Court. It is also quite possible for Parliament to include, along with such changes, provisions in a renewed Constitution which would set out a Statement of Aims and a Charter of Rights and Freedoms to which Parliament would subscribe, and which would be applicable to all activities of Parliament and the federal government thereafter. Provision could be made for provincial governments to join in supporting the Aims and the Charter, at once or when they saw fit.

The government believes that these matters, on which there is full capacity for Parliament to act, should constitute *Phase I* of constitutional renewal. The government pledges itself to consult with the provincial governments respecting all aspects of Phase I, and to seek to work out proposals for action by Parliament which would have maximum support from the governments of the provinces. The government pledges itself to seek passage of such constitutional legislation before July 1, 1979. It is expected that the questions of an amending formula and of patriation would be considered during these consultations. If agreement could be reached, these matters could then be dealt with as soon as possible, rather than await Phase II.

A Constitutional Conference is already contemplated for the autumn, and there should be ample opportunity, between now and then, for public consideration to be given to the kinds of proposals which the federal government will be bringing forward. Between that Conference and the goal of legislation by July 1, 1979, there should be sufficient time for further federal-provincial discussions, public debate and full consideration in Parliament.

*Phase II* of constitutional renewal would cover all those sections of the Constitution on which the federal government and the provinces must discuss together what should be done. The review of the way in which legislative powers are assigned to the federal and provincial governments would be the major part of that work. The task is large and difficult, covering as it does the long lists of activities in which governments at every level are engaged. It will involve an examination of what is done now, of what problems exist, and of how to apportion the tasks to governments so that our federal system may function better and the people be better served.

Previous constitutional work has hardly touched in recent years upon the distribution of legislative powers, but we have had sufficient experience to know that a great deal of effort will be involved. If that effort is put forward by governments with determination, we believe it should be possible to work out proposals for change so that a new and complete Canadian Constitution could be brought into being by July 1, 1981. We will celebrate that year the 50th anniversary of Canada's accession, through the Statute of Westminster, to full independence and international sovereignty. It would be singularly appropriate if we could celebrate that anniversary with the proclamation of our new Constitution. The Government of Canada, for its part, is prepared to devote all the energy that will be needed for the task, and pledges its willingness to work with the governments of the provinces until the renewal of the Constitution and of our Federation is complete.

*The process of constitutional renewal should encourage full discussion among the people of Canada, in Parliament and the legislatures, and among governments, so that all can make their contribution.*

*Given the need for renewal, the process should be designed to achieve within a reasonable period of time the changes which are desired.*

*Phase I of the process should cover those substantial matters upon which Parliament can legislate on its own authority; this phase should be completed and legislation passed by July 1, 1979.*

*Phase II of the process should cover those matters which require joint action by federal and provincial authorities; the goal should be to complete that phase and to have a new constitutional document for Canada by July 1, 1981.*

The government will soon be informing Parliament and all Canadians of the details of its proposals for change under Phase I of constitutional renewal. There is no expectation that these proposals would be passed by Parliament without change. Indeed, the government would not be seeking passage of legislation at this session of Parliament. Rather, it would be introducing legislation so as to provide a basis for thorough discussion in Parliament, with provincial governments and among the public. The final version of the proposals on Phase I, which would result from this process of debate and consultation, should provide an important and urgent first step towards constitutional renewal.

## BILL C-60 (1978)

### PART II IMPLEMENTATION

#### I GENERAL

Commence-  
ment of Act

**124.** Subject to this Act, this Act shall commence on the later of the ninetieth day after the day this Act is assented to and such day, not later than the one hundred and eightieth day after the day this Act is assented to, as may at any time before that ninetieth day be fixed by proclamation.

Designated  
provisions:  
approval of  
additional  
measures to be  
taken when  
agreed

**125.** The enactment of this Act by the Parliament of Canada does not extend to any following provision (in this Part referred to as a "designated provision") set out in Part I of this Act, namely:

- (a) section 31,
- (b) section 33,
- (c) sections 35 to 40,
- (d) sections 79 to 95,
- (e) sections 97 to 99,
- (f) section 120, and
- (g) sections 121 to 123;

and the inclusion in this Act of any designated provision does not constitute an asser-

### PART II

**This Part contains the provisions relating to the implementation of the Bill, such as the commencement of the Act, transitional provisions and consequential amendments to the Act of 1867 and other statutes. (See the Introduction hereto.)**

**124.** The Act would commence on proclamation between 90 and 180 days after it receives assent.

**125.** This section provides for the coming into effect of the designated provisions. (See the Introduction hereto, categories 4 and 5.)

tion by the Parliament of Canada of authority to enact any such provision; but in order that effect may be given as soon as may be to each such designated provision as part of the Constitution of Canada, it is hereby declared and directed that, on and after the commencement of this Act and by virtue of its enactment by the Parliament of Canada, both Houses of the Parliament of Canada shall be deemed to have approved of resolutions for the amendment of the Constitution of Canada in the form and to the effect of each of those provisions, each of which resolutions may be taken up and dealt with, either severally or in combination with any other or others of them, by action as on a joint address or by proclamation, as the case may be, as and when it or they may lawfully be so taken up and dealt with in accordance with the procedure for such amendment then recognized by accepted usage, if there is then no procedure for that purpose expressly provided for by the Constitution of Canada, or in accordance with the procedure for that purpose expressly so provided for, if there is then such a procedure.

Amendment of  
designated  
provisions not  
precluded

**126.** Nothing in section 125 shall be construed as precluding the amendment of any designated provision, including, but without limiting the generality of that expression, any designated provision set out in sections 91 to 95, before such time as any resolution with respect thereto that is deemed by section 125 to have been approved by both Houses of the Parliament of Canada is taken up and dealt with as provided in that section.

Conflicts or  
inconsistencies

**127.** In the event of a conflict or inconsistency between

- (a) the provisions of Part I other than any designated provisions set out therein, or
- (b) after such time as effect has been given by law to any designated provision set out in Part I, the provisions of Part I to which effect has been given,

and the provisions of the Act of 1867 or any subsequent constitutional enactment, the provisions of Part I described in paragraph (a) or (b), as the case may be, shall prevail to the extent of such conflict or inconsistency.

**126.** This section emphasizes the possibility of amendment to any designated section before it is entrenched pursuant to s. 125.

**127.** This section provides a conflicts rule applicable in cases of conflict between Part I and the present legislation. To the extent Part I is in effect, it would prevail.

Schedule of  
enactments,  
etc., repealed or  
amended

**128.** (1) On the commencement of this Act, the portions of the enactments set out in column I of Schedule A to this Act are, in so far as they are part of the law of Canada, repealed or amended in the manner and to the extent specified in column II of that Schedule.

Idem

(2) The provisions of the Act of 1867, as amended by any subsequent constitutional enactment, set out in column I of Schedule B to this Act are, in so far as they are part of the law of Canada, repealed as of the day effect is given by law to the designated provisions of Part I of this Act set out in column II of that Schedule opposite those provisions of the Act of 1867 as so amended.

Idem

(3) The portions of the enactments set out in column I of Schedule C to this Act are amended in the manner and to the extent specified in column II of that Schedule as of the day effect is given by law to the designated provisions of Part I of this Act set out in column III of that Schedule opposite the portions of those enactments so amended and set out in column II thereof.

Construction of  
English and  
French versions  
of Act

**129.** The English and French versions of this Act are equally authoritative and shall be construed together according to the ordinary rules applicable at the commencement of this Act for the construction of the English and French versions of the statutes of Canada, but to the extent that the English language version of any designated provision set out in sections 91 to 95 or sections 121 to 123 remains unchanged in its substance from the text of the constitutional enactment to which it corresponded immediately before its coming into effect as law, the French language version corresponding to that English language version shall, from and after its coming into effect as law, have the same force and effect as that English language version, and shall not be held to operate as new law.

## II SPECIAL RULES AND PROVISIONS

Statement of  
aims of  
Canadian  
Federation: how  
initially  
construed

**130.** (1) On and after the commencement of this Act, the statement of aims of the Canadian federation set out in section 4 of

**128.** Section 128 sets up three schedules for the repeal in phases of existing provisions of the Act of 1867 and other Acts. Schedule A contains the provisions that would be repealed immediately and Schedules B and C relate to those to be repealed as the designated provisions come into effect by entrenchment.

**129.** This section provides rules relating to the construction of the English and French versions of the Bill.

**130.** This section provides for the constitutionalization and entrenchment of the statement of aims of the Canadian federation. (See the Introduction hereto, category 3.)

this Act shall be read and construed as a statement subscribed to by the Parliament and government of Canada, by which they are bound and to which they are committed pursuant to the Constitution of Canada.

Approval of additional measures to be taken when agreed

(2) In order that effect may be given as soon as may be to the statement referred to in subsection (1) as one subscribed to by and binding on the legislatures and governments of all the provinces in common with the Parliament and government of Canada, as part of the Constitution of Canada, it is hereby declared and directed that, on and after the commencement of this Act and by virtue of its enactment by the Parliament of Canada, both Houses of the Parliament of Canada shall be deemed to have approved of a resolution for the amendment of the Constitution of Canada in the form and to the effect of the statement referred to in subsection (1), which resolution may be taken up and dealt with by action as on a joint address or by proclamation, as the case may be, at any time after an amendment to the Constitution of Canada in like form and to the like effect has been approved by the legislatures of all of the provinces, in accordance with the procedure for such amendment then recognized by accepted usage, if there is then no procedure for that purpose expressly provided for by the Constitution of Canada, or in accordance with the procedure for that purpose expressly so provided for, if there is then such a procedure.

Initial application of *Canadian Charter of Rights and Freedoms*

**131.** (1) Until such time as this subsection is repealed by subsection (4), the provisions of the *Canadian Charter of Rights and Freedoms* as enacted by this Act shall be read and construed as extending only to matters coming within the legislative authority of the Parliament of Canada, except as otherwise provided by the legislature of any province acting under the authority conferred on it by the Constitution of Canada.

Approval of additional measures to be taken when agreed

(2) In order that effect may be given as soon as may be to the extension of the Charter referred to in subsection (1) to matters coming within the legislative authority of the legislatures of all the provinces equally as to matters coming within the legislative author-

**131.** This section provides for the constitutionalization and entrenchment of the *Canadian Charter of Rights and Freedoms* and for matters consequential thereto. (See the Introduction hereto, category 2.)

(1) By virtue of subsection (1), the Charter would apply only to federal matters until such time as a province adopts it.

(2) Subsection (2) would authorize the taking of the steps necessary to secure the entrenchment of the Charter.

ity of the Parliament of Canada, as part of the Constitution of Canada, it is hereby declared and directed that, on and after the commencement of this Act and by virtue of its enactment by the Parliament of Canada, both Houses of the Parliament of Canada shall be deemed to have approved of a resolution for the amendment of the Constitution of Canada in the form and to the effect of the Charter referred to in subsection (1), which resolution may be taken up and dealt with by action as on a joint address or by proclamation, as the case may be, as and when it may lawfully be so taken up and dealt with in accordance with the procedure for such amendment then recognized by accepted usage, if there is then no procedure for that purpose expressly provided for by the Constitution of Canada, or in accordance with the procedure for that purpose expressly so provided for, if there is then such a procedure.

Provisions  
applicable when  
Charter  
extended to  
matters within  
provincial  
legislative  
authority

(3) From and after such time as it is provided by the legislature of any province, acting within the authority conferred on it by the Constitution of Canada, that the provisions of the *Canadian Charter of Rights and Freedoms* as enacted by this Act extend to matters coming within its legislative authority,

(a) the provisions of the Act of 1867 respecting the reservation of assent to Bills, the disallowance of Acts and the signification of pleasure on Bills reserved, as those provisions extend and are made applicable to the legislatures of the several provinces by virtue of and in the manner provided in section 90 of the Act of 1867, shall cease to extend and be applicable to the legislature of that province as if they were herein repealed or made inapplicable in terms to that province and its legislature; and

(b) where that province is Ontario, subsection 15(2) of this Act shall not apply so as to require the printing and publishing in English and French of any statutes of, or any revision or consolidation of statutes authorized by, the legislature of that province except any such statutes enacted

(3) Where a province adopts the Charter, the federal government would cease to be able to disallow statutes of that province. Also, because, upon adoption of the Charter, Ontario would be required by s. 15(2) to publish its statutes in French, as well as English, for the first time, some flexibility would be given as to the commencement of this requirement.

after, or any such revision or consolidation authorized to have effect after, such day or days as that legislature shall have fixed therefor.

Full application  
of Charter

(4) At such time as the resolution deemed by subsection (2) to have been approved by both Houses of the Parliament of Canada has been taken up and dealt with as provided in that subsection and any further action required by law to give effect thereto has been taken,

(a) subsection 1 of this section is repealed;

(b) sections 20, 50, 55 to 57, 85 and 86 of the Act of 1867 are repealed;

(c) sections 55 to 57 of the Act of 1867 respecting the reservation of assent to Bills, the disallowance of Acts and the signification of pleasure on Bills reserved, as those sections extended and were applicable immediately before the commencement of this Act to the legislature of the several provinces by virtue of and in the manner provided in section 90 of the Act of 1867, cease to extend and apply thereto, and section 90 is repealed in so far as it relates to the matters provided for in this paragraph; and

(d) section 133 of the Act of 1867 and section 23 of the *Manitoba Act, 1870* are repealed.

Matters  
reserved for  
determination  
by territorial  
governments

(5) Notwithstanding anything in subsection (1), for the purposes of that subsection the legislative authority of the Parliament of Canada shall be deemed not to extend to the Yukon Territory or the Northwest Territories in relation to any matter provided for in sections 13 to 21 of the *Canadian Charter of Rights and Freedoms* that would not, if those territories were provinces of Canada, come within the legislative authority of Parliament, and in relation to any such matter the reference in subsection (1) to the legislature of any province acting under the authority conferred on it by the Constitution of Canada shall be read as extending to the Commissioner in Council of any territory of Canada acting within the authority which is hereby conferred on the Commissioner in Council by the Parliament of Canada.

(4) When the Charter is entrenched, it would apply throughout Canada and s. (1), which limits it to federal matters, would be repealed. Also provisions of the Act of 1867 that relate to matters covered by the Charter, to the disallowance of federal and provincial legislation and to certain specified language rights in Quebec and Manitoba would be repealed.

(5) Pursuant to this subsection, the Commissioner in Council of the Yukon Territory or Northwest Territories would be given the same rights as a provincial legislature with respect to the adoption of the Charter.

Provisions  
respecting  
regional  
disparities and  
the independence of the  
judiciary

132. Subsections 131(1), (2) and (4) (except paragraphs 131(4)(b) to (d)) apply, with such modifications as the circumstances require, to and in respect of sections 96 and 100 of this Act.

Approval of  
measures to  
give binding  
effect to  
provisions  
respecting  
Supreme Court

133. In order that effect may be given as soon as may be to the provisions of division XI of Part I of this Act respecting the Supreme Court of Canada as being binding equally on the Parliament of Canada as on the legislature of all the provinces, as part of the Constitution of Canada, a declaration and direction with respect to those provisions, to the effect set out in subsection 131(2) but with such modifications as the circumstances require, shall be deemed to form part of this subsection as if set out herein.

132. This section provides for the constitutionalization and entrenchment of s. 96 relating to regional disparities and s. 100 relating to the independence of the judiciary. (See the Introduction hereto, category 2.)

133. This section provides for the constitutionalization and entrenchment of ss. 101 to 115 relating to the Supreme Court of Canada. (See the Introduction hereto, category 1(2).)

## REGINA PREMIERS' CONFERENCE (1978)

Extract of letter from the Premier of Saskatchewan to the Prime Minister of Canada dated August 22, 1978:

### "2. Constitutional Reform

"The Premiers discussed this issue at some length. The following are some general principles which they believe to be important.

- i) The Premiers endorse the need for constitutional reform.
- ii) The Premiers believe that major proposals from all sources must be given careful consideration in any process of constitutional reform.
- iii) The Premiers firmly believe that significant constitutional change should have the concurrence of all governments.
- iv) The Premiers oppose any unilateral change by the federal government to the Senate or the role of the monarchy. They express doubt that the federal government has the legal authority to act alone, and emphasized that it would be wrong to do so in any case.

- v) The Premiers believe that institutional and jurisdictional problems interact in such a way that they must be considered together. To consider them apart would, in their opinion, be artificial.
- iv) The Premiers emphasize that it is unrealistic to impose a rigid timetable on the process of constitutional review, and to do so is to invite failure.

"These principles generally outline the approach that the ten Premiers of Canada feel should be adhered to if we are to have a successful and harmonious exercise."

. . .

To be effective in resolving Canada's current problems and to be enduring, constitutional change must be the product of federal and provincial consensus. It cannot be imposed by one of the partners in the federation. Moreover, the discussions must be comprehensive so that all related aspects of the constitution can be considered before the changes are implemented.

. . .

Moreover, constitutional review must proceed in a comprehensive fashion. The elements of a constitution are interrelated and therefore cannot be treated on a piecemeal basis. For example, the functions of an upper house or the nature of the amending formula will be influenced by the distribution of powers between the two orders of government. It would, therefore, be difficult to finalize views on some changes without being aware of how the whole package is to look.

. . .

(Pages 1 and 4 from Ontario paper "A Restatement of Ontario's Views on Canada and the Constitution")

EXTRACT OF LETTER FROM THE PRIME MINISTER OF CANADA TO  
THE PREMIER OF SASKATCHEWAN DATED SEPTEMBER 13, 1978

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The principles you enunciate in your letter include the belief that "institutional and jurisdictional problems interact in such a way that they must be considered together". Here too I think agreement in substance may be obscured by questions of method. Use of the terms "Phase I" and "Phase II" with respect to the federal proposals for the constitutional exercise may have given an impression of sequence in discussion and in consideration that was not our intention. The two "phases" were seen as a sequence in their respective target dates for the implementation of action but not, necessarily, for discussion and consideration. You will recall that I suggested that an item on the distribution of powers should be included in the agenda for the initial constitutional conference. There is no necessity for the "jurisdictional problems" to be considered apart from "institutional" areas: discussion of the two can begin and can proceed simultaneously. We think, however, that action that can constitutionally be taken in Canada, by Parliament acting within its own powers, should be taken. It should not have to wait upon other revisions that may require more time to consider and that can only be completed by the British Columbia Parliament. The federal government does not, any more than the Premiers, want an "unrealistic" or "rigid" time-table. It does, however, feel that some effective start should be made on constitutional change at the earliest possible moment, and in any event, before the electors of Quebec are called upon by their provincial government to choose between political independence on the one hand, and on the other, the preservation of a status quo which federal and provincial governments have proved incapable of changing despite 51 years of effort.

Referring again to the six principles in your letter, the federal government agrees fully that "proposals from all sources" must be given careful consideration. It agrees too that it is desirable to achieve the largest possible measure of agreement with the governments of the provinces. What we have done over the last months bears this out. It was in earnest of the government's commitment to hold discussion and to seek agreement that I outlined the plan for constitutional action to you and to all other Premiers when I met separately with each of you in the months preceding the Federal-Provincial Conference last February. It was for the same purpose that federal Ministers and officials visited eight Premiers and the designated Ministers in the other two provinces in June to confirm this commitment and to outline the government's proposals in more detail. After the proposals were made public on June 20, I proposed dates for the Constitutional last February, and suggested that Mr. Lalonde meet with his opposite numbers in the provinces to prepare such a conference. A Joint Committee of Parliament was established for full public discussion and the government published a number of documents on important aspects of the proposals as a basis for effective discussion with provincial governments and all the interested parties during the process of constitutional renewal. (Need I mention that many interested parties - including the Ontario Advisory Committee on Confederation, the Progressive-Conservative Party, the Canadian Bar Association, Canada West and so on - have been publishing their constitutional proposals and it would have been passing strange if the Government of Canada had been precluded from publishing its own proposals.)

In short, we have done everything we could to make clear that we want a full exchange of views with the provinces and as much agreement as can be achieved. The question is not whether agreement is desirable: it is. The question is whether, if the complete agreement of all provinces cannot be achieved, nothing whatever can be done - as nothing has been done in eight previous efforts to achieve major and far-reaching agreements on constitutional change, undertaken by six Prime

Ministers of Canada, starting in 1927. The federal government believes that a continuation indefinitely of that total incapacity to act is not something that can or should be accepted as the inevitable result of a possible failure to get the agreement of each and every government. And that is why, on the elements of change that fall within the exclusive jurisdiction of Parliament under Section 91(1) of the B.N.A. Act, we felt impelled to set a deadline of one year.

Section 91(1) of the British North America Act empowers the Parliament of Canada to amend our Constitution in areas of federal concern just as Section 92(1) empowers each provincial Legislature to amend the Constitution in areas of provincial concern. There are, as you know, five clearly stated exceptions to the jurisdiction of Parliament under Section 91(1). The proposals we published on June 20 set forth areas of action that, in the opinion of the federal government and its legal advisers, are within the powers of Parliament. The fourth "principle" in your letter expresses "doubt" that the "federal government has the legal authority to act alone". The "authority" is, of course, a matter of constitutional law and resides in the Parliament of Canada, not in the government. With regard to its extent, I am enclosing herewith a copy of a statement made in the Joint Parliamentary Committee on the Constitution by the Minister of Justice on August 31.

While there may be debate about the precise extent of the power of Parliament under Section 91(1), there can be no doubt that it exists and that it is extensive. Neither the "principles" in your letter nor the communiqué of August 10 appear to distinguish between constitutional changes that are within the jurisdiction of Parliament under Section 91(1) and those that are not. The provincial governments have, legitimately, shown a sensitivity about "intrusions" by the federal government into areas of their jurisdiction. I think many

of the claims of intrusion are debatable. However, if there have been federal intrusions into areas of provincial jurisdiction, there has been none, I think, that is as direct and as sweeping as the provincial intrusion into federal jurisdiction that appears to be involved in the second Regina communiqué. In substance, if we understand it rightly, it declares that federal jurisdiction under Section 91(1) must not even be exercised, if it be "significant" or "important", except with the permission of the provincial governments. As I have said, the communiqué does not qualify that position as being in respect of matters that could, possibly, be considered to be outside the powers of Parliament under Section 91(1). The communiqué states that there should be no change that is "significant" or "important", no matter how clear the jurisdiction of Parliament may be, without the approval of ten provincial governments. We agree that provincial jurisdiction should be respected. The federal government feels that the jurisdiction of Parliament also must be respected.

However, the goal of the federal government is not confrontation; it is the attainment of the greatest possible measure of agreement, with the provinces and among the people of Canada, for those important changes in our Constitution that seem essential to the renewal of our Federation. But in the last analysis, Parliament itself must decide whether the national interest requires it to exercise the powers it possesses. And, the federal government does not accept the proposition that the power of Parliament under Section 91(1) can only be exercised with the approval of each provincial government."

#### LAMONTAGNE/MACGUIGAN REPORT (OCTOBER 1978)

No proposal

## CONSTITUTIONAL CONFERENCE (1978)

NOTE: The source of each extract is shown at the end in brackets.

. . .

### 2. THE RENEWAL OF THE CONSTITUTION

There was agreement among First Ministers on:

- the importance and urgency of constitutional change;
- the responsibility that rests on the federal government and provincial governments to find solutions to constitutional problems;
- the need for all governments to adopt a flexible approach and to demonstrate a willingness to compromise; and,
- the need for all governments to devote time and effort to the task of renewal.

### 3. PROCESS OF RENEWAL

The First Ministers agreed:

- a) to establish a Constitutional Committee composed of designated federal and provincial Ministers, including ministers of intergovernmental affairs, Ministers of Justice and Attorneys General, as appropriate. The Committee will be assisted by officials and will be joined, as appropriate, by other Ministers as particular powers come under study;

- b) to make arrangements, within each of their governments, to ensure that rapid consideration will be given by their respective Cabinets to points of contention that might arise in the Constitutional Committee, to accelerate the decision-making process;
- c) to ask the Constitutional Committee to provide them with interim reports on difficulties that might arise during its deliberations, which could prevent specific proposals being framed prior to their next Conference on the Constitution;
- d) to direct that the Committee report to First Ministers before their next Conference on the Constitution;
- e) to meet in conference, to consider and act upon the specific proposals of the Constitutional Committee, and other matters relating to the renewal of the Constitution, the 5th and 6th of February, 1979.

(Communiqué)

### The Process of Constitutional Review

On June 20th, 1978, the Prime Minister of Canada, on behalf of the federal government, introduced into the House of Commons Bill C-60, *The Constitutional Amendment Bill*. The introductory notes state that "The Bill proposes the beginning of a process that would lead to a new and wholly Canadian statement of Canada's Constitution." The White Paper entitled "A Time for Action" issued preceding the introduction of the Bill confirms the fact that it is the intention of the federal government to undertake the process of constitutional review not only by alterations to the *British North America Act* but by codifying in one document many of the other instruments that go to make up the totality of Canada's Constitution, namely Acts of the British Parliament, Imperial Orders in Council, Acts of the Parliament of Canada, constitutional practice and usage, and even leading judicial decisions which have interpreted the meaning of the *B.N.A. Act* and other of our constitutional documents.

Since the date of its introduction the Bill and the accompanying White Paper have received wide distribution throughout the country stimulating much debate and the Bill has been the subject of consideration by a Joint Committee of the Senate and House of Commons and also by a Committee of the Senate of Canada.

The White Paper states that "The (federal) government believes that each government in Canada, provincial or federal has a responsibility to make its contribution to the on-going debate". It is in keeping with that view that the Government of British Columbia has developed over the past year the comprehensive set of Constitutional proposals contained within this set of nine papers.

### PROVINCIAL CONCERNS

#### (a) *No Prior Consultation With Provinces*

British Columbia views with considerable regret that with no prior consultation with the provinces the Federal Government saw fit to proceed with the putting forward of its proposals on the Constitution in the form of a Bill before Parliament. These concerns were expressed in some detail in a letter from Premier Bennett to Prime Minister Trudeau dated June 26th, 1978, a portion of which is as follows:

" . . . I want to express to you my serious concerns about the nature of the process of constitutional review that you propose to follow. In your proposals and your accompanying letter to me of June 12th you indicate a number of times that both with respect to the matters included in phase 1 and phase 2 you are "committed to extensive

consultation with the Provinces . . .". It is the nature and scope of those consultations that I am concerned about and on which I seek your clarification.

I would hope that the consultation process with the provinces will not be limited to your seeking merely our reactions to your proposals. Rather I trust that the process will provide a full opportunity to the provinces to put forward their own proposals, if they so desire, to be treated at the conference table on an equal basis and with the same degree of deference as the Federal proposals now made public.

Speaking for my province, I can advise you that for many months we have been working on the development of a comprehensive set of constitutional proposals through our Cabinet Committee on Confederation. We expect to have them finalized by late August or early September. I expect that other provincial governments are doing likewise. That being the case, does the consultative process which you have in mind allow for the full and proper consideration by first ministers of any and all such proposals in an equal light? When phase 1 ultimately goes forward and becomes part of our Constitution will it represent a truly joint effort bringing together the proposals of all governments?

I hope that you envisage a consultation process along the lines just described. I fear that if the process is any thing less—for example, a few brief meetings during the summer at the officials' level, followed by a single First Ministers' Conference in the early autumn with an agenda consisting largely of the Federal proposals, followed by the introduction and passage of legislation in Parliament shortly after the conference—then there is a good chance that the new Canadian Constitution will neither have the support of many parts of the country nor contribute usefully to a lasting solution to many of our national problems."

The Prime Minister responded by letter dated July 10, 1978, which reads in part as follows:

"I am sure we will have every opportunity, at the forthcoming Conference of First Ministers on the Constitution, for a thorough discussion of the proposals you will be bringing forward. On the question of process for consultation, a number of the points you raised in your letter have, I believe, been covered in my letter of July 7. The process, as I see it, is certainly not limited to the federal government seeking "merely your reactions" to federal proposals. I have said repeatedly that we will welcome alternative suggestions for the various proposals contained in the Constitutional Bill, and while our own ideas have been put forward after a good deal of thought and represent our considered views, we do not in any way preclude the possibility that other ideas may be presented which could, after discussion and reflection, seem even better."

British Columbia, therefore, looks forward to the genuine process of negotiation and consultation that has been promised.

Apart from the matter of full consultation there are other aspects to the process of constitutional review envisaged by the federal government which are of concern to the Government of British Columbia.

*(b) Unilateral Action*

The federal government has divided the constitutional review process into two phases and has included in phase one what it considers to be matters on which it is entitled to proceed unilaterally without necessarily obtaining the concurrence of the provinces. Included in this category are the measures contained in Bill C-60 relating to the federal executive, including the role of the monarchy and the Governor-General of Canada and the proposed changes to the Senate of Canada.

While it is true that since a 1949 amendment to the *B.N.A. Act* the federal Parliament is able to unilaterally amend provisions of the *B.N.A. Act* within federal jurisdiction, it is equally true that it does not have such power on subject matters which affect the rights or privileges of the provinces. It is British Columbia's view that a number of the more significant subject matters contained within phase one are simply beyond the scope of those matters on which the federal government can proceed unilaterally. The role of the Monarchy, the position of the Governor-General and a major revamping of the Senate of Canada are clearly matters of profound import to the provinces to a like degree as they are to the federal government. Accordingly, having regard to Section 91 (1) of the *B.N.A. Act* and past constitutional practice in which amendments to the *B.N.A. Act* which affect provincial rights first received the unanimous concurrence of all provincial governments, the Government of British Columbia is of the view that it would be a violation of established constitutional practice for the Government of Canada to proceed unilaterally on these matters.

Apart altogether from what may be the accepted constitutional practice, it is the Government of British Columbia's view that it would be extremely unwise for the federal government to proceed in this way. What the federal government describes as "the renewal of the federation" ought to be carried on by a process that is conducive to engendering national unity. Any unilateral move would lead to further disunity and unnecessary divisiveness throughout the country and the process would, therefore be self-defeating.

*(c) Compartmentalized Constitutional Review*

There are other reasons why the Government of British Columbia is not in favour of the constitutional review process being proceeded with in a compartmentalized way. Changes to the central institutions of federalism, which is a subject contained within phase one, interact with and only take on their full meaning if the distribution of powers between the two levels of government (a phase two matter) is clearly known. This interaction between institutional change and jurisdictional change means that both must, of necessity, be considered and go forward simultaneously.

(d) *The Codification of Our Constitution*

The *B.N.A. Act* is not, of course, the sum total of Canada's Constitution. As has been stated above, the Constitution of Canada includes the *B.N.A. Act* and also a great many other statutes—Imperial and federal—as well as numerous Imperial Orders in Council and many unwritten constitutional customs and practices. This, of course, was the British system of constitutional development which is the basis for our own in Canada.

It is clearly the intention of the government of Canada to proceed to codify all of these elements that make up our Constitution into one comprehensive document. That is the basis on which Bill C-60 has been drawn. The government of British Columbia sees no necessity to proceed in this way. The totality of the Constitution has been flexible enough to evolve over time. To codify it is to freeze it in place, with, in all likelihood, a rather rigid process for amendment. Moreover, codification will lead, and has already lead, to undue debate and devisiveness as to precisely what the totality of our Constitution now contains.

(e) *Constitutional "Overstuffing"*

There is a danger in including too many subject matters in the Constitution as if placing matters in the Constitution is necessarily going to advance their solution. To be sure revision of the *B.N.A. Act* is necessary to meet contemporary needs and to alleviate the current stresses within the federation. But we must guard against the tendency to put too much in the Constitution as if such a course would be the panacea for all the country's ills. There is no basis for believing that the constitution-makers of today will prove to be wiser than the legislators of tomorrow.

For example, the Government of British Columbia is not convinced that basic human rights, including language rights are best dealt with by entrenching them in the Constitution. A good argument can be made that ordinary legislative action is a more flexible and more appropriate means of assuring these rights. The issues are dealt with at length in Papers Nos. 6 and 7 in this series.

(Pages 11-15 from "British Columbia's Constitutional Proposals, Paper No. 1 - Towards a Revised Constitution for Canada". For a more complete analysis see full text available from the CICS.)

. . .

1. That the proposed changes to the Constitution be considered as a package, and not be compartmentalized.
2. That the process be undertaken with all deliberate speed, but that no unrealistic timetable be established.
3. That no changes to the Constitution which affect federal-provincial relations or which affect the provinces be adopted without the concurrence of the eleven governments of Canada and of Parliament and the Provincial Legislatures.
4. That modifications to the division of powers be recognized as the key to achieving a new federalism for Canada.
5. That the division of powers be discussed concurrently with other constitutional questions, such as federal institutions.

. . .

(Page 24 from Alberta's position paper "Harmony in Diversity: A New Federalism for Canada." For a more complete analysis see full text available from the CICS.)

. . .

But I believe that there are areas where agreement can be reached, where a new bargain can be struck.

It seems to me that while public discussion continues on some of the newer topics raised, e.g. the place of the Crown and the Monarchy or the future of the Senate we can make real progress on a short list of items. Among these I would include:

resource taxation and management  
communications and some aspects of culture  
language rights

delegation of legislative powers among  
governments  
the Supreme Court or other constitutional  
court entrenching the equalization principle  
and, possibly, an amending formula.

In all these areas I believe compromise solutions are possible, solutions which will convince Canadians that the Federal Government is not wedded to the status quo, that serious regional concerns can be met, that linguistic rights can be protected and that we can do all of these things soon.

Let's do now what can be done now.

- we are here to work
- we are here to compromise if necessary.

In short,

- we are here, Mr. Chairman, to strike a bargain  
for a better and stronger Canada.

Let's get on with the job.

(Pages 13, 14 and 15 from Saskatchewan's paper "Notes for  
Introductory Statement by the Honourable Allan Blakeney")

. . .

CONSTITUTIONAL PROPOSALS CAN BE COMPLEX, BUT THEIR UTILITY CAN ALSO BE MEASURED AGAINST SOME CLEAR TESTS. MY TESTS ARE AS FOLLOWS:

- . DO THEY STRENGTHEN AND IMPROVE  
RELATIONSHIPS IN THIS COUNTRY?
- . DO THEY HAVE THE SUPPORT OF CANADIANS IN  
ALL PARTS OF THE COUNTRY?
- . DO THEY WORK?
- . . .

1. CONSTITUTIONAL CHANGE IS A NATIONAL  
PRIORITY AND MUST BE TREATED AS SUCH.
2. A CLEARER IDEA OF WHAT WILL AND WHAT WILL  
NOT WORK IS EMERGING.
3. OUR INDIVIDUAL INTERESTS AND CONCERNS, AND  
WHAT CHANGES EACH OF US REGARD AS ESSENTIAL  
TO PRESERVE A BLEND OF NATIONAL AND LOCAL  
INTERESTS, ARE BETTER UNDERSTOOD.

4. REFORM MUST BE COMPREHENSIVE, AND A WISE AGREEMENT IS UNLIKELY ON A PIECEMEAL BASIS.
5. A REASONABLE CONSENSUS AMONG THE ELEVEN GOVERNMENTS HERE IS THE EFFECTIVE WAY TO PROCEED IF WE ARE TO ACHIEVE OUR OBJECTIVE OF ESTABLISHING AN ATMOSPHERE OF TRUST AMONG CANADIANS, WHICH IS A PRE-REQUISITE OF A RESTORED NATIONAL PURPOSE.
6. DIFFERENCES CANNOT SIMMER INDEFINITELY; ACCOMMODATIONS AND COMMITMENTS SHOULD BE MADE WITHIN AN AGREED UPON AND FORESEEABLE TIME.

. . .

I STATED AT THE OUTSET OF THESE REMARKS WHAT I HOPE THIS MEETING WILL ACCOMPLISH. I CONCLUDE ON THIS NOTE BECAUSE I WOULD LIKE TO THINK THAT WE COULD AGREE TO ADOPT A CONSENSUS ABOUT THE FUTURE ALONG THE FOLLOWING LINES:

- . FIRST, AT THIS CONFERENCE STATE WHAT WE WANT DONE. IDENTIFY THE ISSUES THAT WE ALL AGREE SHOULD BE GIVEN PRIOR ATTENTION IN THE CONSTITUTION.

- . SECOND, AT THIS CONFERENCE ESTABLISH FOR THIS PURPOSE ALONE, A JOINT COMMITTEE ON CONSTITUTIONAL CHANGE AND INSTRUCT IT TO TACKLE THE SPECIFIC LIST OF ISSUES WE AGREE ON HERE;REDUCE THEM TO FIRM RECOMMENDATIONS;AND PRESENT THEM TO ANOTHER MEETING OF THIS GROUP TO BE HELD WITHIN SIX MONTHS.
  
  - . THIRD, REVIEW THESE RECOMMENDATIONS, RECONCILE THE FEW, SELECTED, OUTSTANDING DIFFERENCES, AND AGREE ON A PACKAGE OF PROPOSALS FOR CHANGE.
  
  - . FOURTH, ASSIGN THIS PACKAGE TO LEGISLATIVE DRAFTSMEN TO DEVELOP THE PRECISE CONSTITUTIONAL LANGUAGE BASED ON OUR PROPOSALS.
  
  - . FIFTH, AND FINALLY, HAVE THIS GROUP REVIEW THE FINAL TEXT, AND SUBMIT IT AS OUR JOINT AND FIRM RECOMMENDATIONS TO PARLIAMENT AND THE PROVINCIAL LEGISLATURES FOR THEIR APPROVAL.
- . . .

.6

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. . .

I think it is fair to say that although most differences appear to be federal-provincial in nature, there are occasions when provinces differ more substantially among themselves.

. . .

In view of the nature of the differences to which I have just referred, and, since resolution of these differences cannot avoid having a substantial impact on both levels of government, we in Prince Edward Island are of the opinion that future discussions ought to be primarily federal-provincial ones and any mechanism that is devised to continue this process should include both levels of government throughout all stages of the process.

. . .

(Pages 15 and 16 from Prince Edward Island's paper "Statement by the Honourable W. Bennett Campbell")



OPENING CLAUSES OF THE CONSTITUTION



## II. OPENING CLAUSES OF THE CONSTITUTION

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B.N.A. ACT

THE BRITISH NORTH AMERICA ACT, 1867

30 & 31 Victoria, c. 3.

(Consolidated with amendments)

An Act for the Union of Canada, Nova Scotia, and New Brunswick, and the Government thereof; and for Purposes connected therewith.

*(29th March, 1867.)*

WHEREAS the Provinces of Canada, Nova Scotia and New Brunswick have expressed their Desire to be federally united into One Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a Constitution similar in Principle to that of the United Kingdom:

And whereas such a Union would conduce to the Welfare of the Provinces and promote the Interests of the British Empire:

And whereas on the Establishment of the Union by Authority of Parliament it is expedient, not only that the Constitution of the Legislative Authority in the Dominion be provided for, but also that the Nature of the Executive Government therein be declared:

And whereas it is expedient that Provision be made for the eventual Admission into the Union of other Parts of British North America: (1)

I.—PRELIMINARY.

1. This Act may be cited as The British North America Act, 1867. Short title.

2. Repealed. (2)

II.—UNION.

Declaration of  
Union.

3. It shall be lawful for the Queen, by and with the Advice of Her Majesty's Most Honourable Privy Council, to declare by Proclamation that, on and after a Day therein appointed, not being more than Six Months after the passing of this Act, the Provinces of Canada, Nova Scotia, and New Brunswick shall form and be One Dominion under the Name of Canada; and on and after that Day those Three Provinces shall form and be One Dominion under that Name accordingly. (3)

## VICTORIA CHARTER (1971)

No reference

## SPECIAL JOINT COMMITTEE ON THE CONSTITUTION (1972)

### *Chapter 6—The Preamble to the Constitution*

5. The Canadian Constitution should have a preamble which would proclaim the basic objectives of Canadian federal democracy.

### PART II—THE PEOPLE

#### *Chapter 7—Self-Determination*

6. The preamble of the Constitution should recognize that the Canadian federation is based on the liberty of the person and the protection of basic human rights as a fundamental and essential purpose of the State. Consequently, the preamble should also recognize that the existence of Canadian society rests on the free consent of its citizens and their collective will to live together, and that any differences among them should be settled by peaceful means.
7. If the citizens of a part of Canada at some time democratically declared themselves in favour of a political arrangement which were contrary to the continuation of our present political structures, the disagreement should be resolved by political negotiation, not by the use of military or other coercive force.
8. We reaffirm our conviction that all of the peoples of Canada can achieve their aspirations more effectively within a federal system, and we believe Canadians should strive to maintain such a system.

#### *Chapter 8—Native Peoples*

9. No constitutional changes concerning native peoples should be made until such time as their own organizations have completed their research into the question of treaty and aboriginal rights in Canada.
10. The preamble of the new Constitution should affirm the special place of native peoples, including Métis, in Canadian life.
27. **The preamble to the Constitution should formally recognize that Canada is a multicultural country.**
31. **The preamble of the Constitution should provide that every Canadian should have access to adequate Federal, Provincial and municipal services without having to bear a disproportionate tax burden because of the region in which he lives. This recommendation follows logically from our acceptance of the principle of equality of opportunity for all Canadians.**

## DRAFT PROCLAMATION (1976)

### DRAFT

#### CONFIDENTIAL

November 10th, 1975.

Form for a Proclamation of the Governor General

WHEREAS it is fitting that it should be possible to amend the Constitution of Canada in all respects by action of the appropriate instrumentalities of government in Canada acting separately or in concert as may best suit the matter in question;

AND WHEREAS it is desirable to make more specific provision respecting the constitutional status of the English and French languages in Canada and to ensure that changes in the Constitution, interpretation of its provisions or action by the Parliament or Government of Canada should not endanger the continuation and full development of the French language and the culture based thereon;

AND WHEREAS it is desirable that the Parliament and Government of Canada and the Legislatures and Governments of the Provinces act effectively to promote equality of opportunity and an acceptable level of public services among the different regions of Canada;

## PREMIERS' CONFERENCES (1976)

None specified

## DRAFT RESOLUTION (1977)

WHEREAS it is in accord with the status of Canada as an independent state that the Canadian people should be able through their chosen representatives to provide for themselves the means by which to alter their own Constitution in all respects.

And whereas hitherto certain amendments to the Constitution of Canada have been made by the Parliament of the United Kingdom at the request and with the consent of Canada;

And whereas it is desirable that it should be possible to amend the Constitution of Canada in all respects by action of the appropriate instrumentalities of government in Canada;

And whereas the Proclamation hereinafter referred to embodies provisions with respect to the Constitution of Canada and the means whereby it may hereafter be amended;

Be it therefore resolved that we, [the Senate] and [House of Commons] approve the promulgation of a Proclamation by the Governor General, to have the force of law as well in Canada as in the United Kingdom, in the following terms:

"Proclamation respecting the Constitution of Canada

BILL C-60 (1978)

An Act to amend the Constitution of Canada with respect to matters coming within the legislative authority of the Parliament of Canada, and to approve and authorize the taking of measures necessary for the amendment of the Constitution with respect to certain other matters

Preamble

The Parliament of Canada, affirming the will of Canadians to live and find their futures together in a federation based on equality and mutual respect, embracing enduring communities of distinctive origins and experiences, so that all may share more fully in a freer and richer life;

**Preamble: New.** While the provisions of the preamble and the statement of aims of the Canadian federation are not legally binding in the sense of being enforceable in a court, they comprise a statement of intention for the country and would serve as a guide to the courts where the courts are interpreting a substantive section of the Bill and where the meaning of the section, in the particular circumstances, is not clear. They also provide evidence of the spirit that has led to the process of change.

Honouring the contribution of Canada's original inhabitants, of those who built the foundations of the country that is Canada, and of all those whose endeavours through the years have endowed its inheritance;

Welcoming as witness to that inheritance the evolution of the English-speaking and French-speaking communities, in a Canada shaped by men and women from many lands;

And being resolved that a renewal of the Canadian federation, guided by aims set forth in its constitution, can best secure the fulfilment of present and future generations of Canadians:

Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

## PART I

### PROVISIONS RESPECTING THE CONSTITUTION OF CANADA

#### I CONTINUATION OF UNION

Continuation of  
union

2. By this enactment, the people of Canada declare and affirm the continuation of the union brought into being by the *British North America Act, 1867* (hereinafter called the "Act of 1867") and subsequent constitutional enactments, following upon the expression, in the Act of 1867, of the desire of its original component provinces to be united together under the name of Canada with a constitution similar in principle to that of the United Kingdom, by the law of whose Parliament the union was thus born.

## PART I

2. This section would continue the union brought into being by the Act of 1867. It is new but would replace ss. 3 and 4 of that Act which relate to the 1867 declaration of union.

## II STATEMENT OF AIMS OF THE CANADIAN FEDERATION

Aims for which  
Canadian  
federation to be  
constituted

**3.** By this enactment, the people of Canada likewise declare and affirm that the union referred to in section 2 shall be so constituted as to further, to the greatest extent possible, their expectations for a future in common as participants in a federation founded on equality and mutual respect, just pride in the achievements of their past from which they benefit and in which they share, profound respect for personal worth and freedom, and acceptance of their responsibilities as participants in such a federation; it is therefore deemed fitting and timely to consecrate within the Constitution of Canada a statement of aims to assist and guide all Canadians in the governance of the federation and in their relations with one another.

Statement of  
aims of  
Canadian  
Federation

**4.** To these ends, the stated aims of the Canadian federation shall be:

- to protect the fundamental rights of all Canadians and to promote the conditions of life under which their legitimate aspirations and essential worth and dignity may best be realized;
- to ensure that its society is governed by institutions and laws whose legitimacy is founded upon the will and consent of the people; and to ensure, as well, that neither the power of government nor the will of a majority shall interfere in an unwarranted or arbitrary manner with the enjoyment by each Canadian of his or her liberty, security and well-being;
- to pursue social justice and economic opportunity for all Canadians through the equitable sharing of the benefits and burdens of living in the vast land that is their common inheritance, through the commitment of all Canadians to the balanced development of the land of their common inheritance and to the preservation of its richness and beauty in trust for themselves and generations to come, and through their commitment to overcome unacceptable disparities among Canadians in every region including disparities in the basic public services available to them;

**3-4. New.** These sections set out for the first time a statement of the fundamental objectives of the Canadian federation. (See also the notes for the Preamble and for s. 130, which provides for the coming into effect of the statement of aims, and the Introduction to these Explanatory Notes, category 3.)

—to expand the horizons of Canadians as individuals, and enhance their collective security and distinctiveness as a people, by affirming through their daily lives and governance the fundamental proposition of the new nationality created by their forbears, that is to say, the proposition that fraternity does not require uniformity nor need diversity lead to division; and as elements of that proposition:

(i) to ensure throughout Canada equal respect for English and French as the country's principal spoken languages, and for those Canadians who use each of them;

(ii) to ensure throughout Canada equal respect for the many origins, creeds and cultures and for the differing regional identities that help shape its society, and for those Canadians who are part of each of them; and

(iii) inasmuch as the North American majority is, and seems certain to remain overwhelmingly English-speaking, to recognize a permanent national commitment to the endurance and self-fulfilment of the Canadian French-speaking society centred in but not limited to Quebec;

each of these elements reinforcing the others and lending strength to the distinctiveness of the Canadian nationality and of its contribution to the world community.

## II SPECIAL RULES AND PROVISIONS

Statement of  
aims of  
Canadian  
Federation: how  
initially  
construed

130. (1) On and after the commencement of this Act, the statement of aims of the Canadian federation set out in section 4 of this Act shall be read and construed as a statement subscribed to by the Parliament and government of Canada, by which they are bound and to which they are committed pursuant to the Constitution of Canada.

130. This section provides for the constitutionalization and entrenchment of the statement of aims of the Canadian federation. (See the Introduction hereto, category 3.)

Approval of  
additional  
measures to be  
taken when  
agreed

(2) In order that effect may be given as soon as may be to the statement referred to in subsection (1) as one subscribed to by and binding on the legislatures and governments of all the provinces in common with the Parliament and government of Canada, as part of the Constitution of Canada, it is hereby declared and directed that, on and after the commencement of this Act and by virtue of its enactment by the Parliament of Canada, both Houses of the Parliament of Canada shall be deemed to have approved of a resolution for the amendment of the Constitution of Canada in the form and to the effect of the statement referred to in subsection (1), which resolution may be taken up and dealt with by action as on a joint address or by proclamation, as the case may be, at any time after an amendment to the Constitution of Canada in like form and to the like effect has been approved by the legislatures of all of the provinces, in accordance with the procedure for such amendment then recognized by accepted usage, if there is then no procedure for that purpose expressly provided for by the Constitution of Canada, or in accordance with the procedure for that purpose expressly so provided for, if there is then such a procedure.

### REGINA PREMIERS' CONFERENCE (1978)

Premiers feel that, if there is to be a preamble, it should be short, clear, and precise. A statement of aims, if any, would best be included in the preamble. (Extract from Communiqué)

### LAMONTAGNE/MACGUIGAN REPORT (OCTOBER 1978)

#### Recommendation 2

The Preamble and Statement of Aims of the proposed Bill should be redrafted for conciseness, style and content.

CONSTITUTIONAL CONFERENCE (1978)

No proposal



## FUNDAMENTAL RIGHTS



### III. FUNDAMENTAL RIGHTS

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B.N.A. ACT

**20.** There shall be a Session of the Parliament of Canada once at least in every Year, so that Twelve Months shall not intervene between the last Sitting of the Parliament in one Session and its first Sitting in the next Session. (9)

Yearly Session  
of the  
Parliament of  
Canada.

Duration of  
House of  
Commons.

**50.** Every House of Commons shall continue for Five Years from the Day of the Return of the Writs for choosing the House (subject to be sooner dissolved by the Governor General), and no longer.

**85.** Every Legislative Assembly of Ontario and every Legislative Assembly of Quebec shall continue for Four Years from the Day of the Return of the Writs for choosing the same (subject nevertheless to either the Legislative Assembly of Ontario or the Legislative Assembly of Quebec being sooner dissolved by the Lieutenant Governor of the Province), and no longer. (36)

Duration of  
Legislative  
Assemblies.

**86.** There shall be a Session of the Legislature of Ontario and of that of Quebec once at least in every Year, so that Twelve Months shall not intervene between the last Sitting of the Legislature in each Province in one Session and its first Sitting in the next Session.

Yearly Session  
of Legislature.

**92.** In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subject next herein-after enumerated; that is to say,—

Subjects of  
exclusive  
Provincial  
Legislation.

1. The Amendment from Time to Time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the Office of Lieutenant Governor.

# CANADIAN BILL OF RIGHTS (1960)

## BILL OF RIGHTS.

1. It is hereby recognized and declared that in Canada there have existed and shall continue to exist without discrimination by reason of race, national origin, colour, religion or sex, the following human rights and fundamental freedoms, namely,

Recognition  
and  
declaration of  
rights and  
freedoms.

- (a) the right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law;
- (b) the right of the individual to equality before the law and the protection of the law;
- (c) freedom of religion;
- (d) freedom of speech;
- (e) freedom of assembly and association; and
- (f) freedom of the press.

Construction  
of law.

2. Every law of Canada shall, unless it is expressly declared by an Act of the Parliament of Canada that it shall operate notwithstanding the *Canadian Bill of Rights*, be so construed and applied as not to abrogate, abridge or infringe or to authorize the abrogation, abridgment or infringement of any of the rights or freedoms herein recognized and declared, and in particular, no law of Canada shall be construed or applied so as to

- (a) authorize or effect the arbitrary detention, imprisonment or exile of any person;
- (b) impose or authorize the imposition of cruel and unusual treatment or punishment;
- (c) deprive a person who has been arrested or detained
  - (i) of the right to be informed promptly of the reason for his arrest or detention,
  - (ii) of the right to retain and instruct counsel without delay, or
  - (iii) of the remedy by way of *habeas corpus* for the determination of the validity of his detention and for his release if the detention is not lawful;
- (d) authorize a court, tribunal, commission, board or other authority to compel a person to give evidence if he is denied counsel, protection against self incrimination or other constitutional safeguards;
- (e) deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations;
- (f) deprive a person charged with a criminal offence of the right to be presumed innocent until proved guilty according to law in a fair and public hearing by an independent and impartial tribunal, or of the right to reasonable bail without just cause; or
- (g) deprive a person of the right to the assistance of an interpreter in any proceedings in which he is involved or in which he is a party or a witness, before a court, commission, board or other tribunal, if he does not understand or speak the language in which such proceedings are conducted.

5. (1) Nothing in Part I shall be construed to abrogate <sup>Savings.</sup> or abridge any human right or fundamental freedom not enumerated therein that may have existed in Canada at the commencement of this Act.

(3) The provisions of Part I shall be construed as <sup>Jurisdiction of</sup> extending only to matters coming within the legislative <sup>Parliament.</sup> authority of the Parliament of Canada.

## VICTORIA CHARTER (1971)

Art. 1 It is hereby recognized and declared that in Canada every person has the following fundamental freedoms:

freedom of thought, conscience  
and religion,  
freedom of opinion and expression,  
and  
freedom of peaceful assembly and of  
association;

and all laws shall be construed and applied so as not to abrogate or abridge any such freedom.

Art. 2. No law of the Parliament of Canada or the Legislatures of the Provinces shall abrogate or abridge any of the fundamental freedoms herein recognized and declared.

Art. 3. Nothing in this Part shall be construed as preventing such limitations on the exercise of the fundamental freedoms as are reasonably justifiable in a democratic society in the interests of public safety, order, health or morals, of national security, or of the rights and freedoms of others, whether imposed by the Parliament of Canada or the Legislature of a Province, within the limits of their respective legislative powers, or by the construction or application of any law.

Art. 4. The principles of universal suffrage and free democratic elections to the House of Commons and to the Legislative Assembly of each Province are hereby proclaimed to be fundamental principles of the Constitution.

Art. 5. No citizen shall, by reason of race, ethnic or national origin, colour, religion or sex, be denied the right to vote in an election of members to the House of Commons or the Legislative Assembly of a Province, or be disqualified from membership therein.

Art. 6. Every House of Commons shall continue for five years from the day of the return of the writs for choosing the House and no longer, subject to being sooner dissolved by the Governor General, except that in time of real or apprehended war, invasion or insurrection, a House of Commons may be continued by the Parliament of Canada if the continuation is not opposed by the votes of more than one third of the members of the House.

Art. 7. Every Provincial Legislative Assembly shall continue for five years from the day of the return of the writs for the choosing of the Legislative Assembly, and no longer, subject to being sooner dissolved by the Lieutenant-Governor, except that when the Government of Canada declares that a state of real or apprehended war, invasion or insurrection exists, a Provincial Legislative Assembly may be continued if the continuation is not opposed by the votes of more than one third of the members of the Legislative Assembly.

Art. 8. There shall be a session of the Parliament of Canada and of the Legislature of each Province at least once in every year, so that twelve months shall not intervene between the last sitting of the Parliament or Legislature in one session and its first sitting in the next session.

Art. 9. Nothing in this Part shall be deemed to confer any legislative power on the Parliament of Canada or the Legislature of any Province.

## SPECIAL JOINT COMMITTEE ON THE CONSTITUTION (1972)

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### *Chapter 9—Fundamental Rights*

13. Canada should have a Bill of Rights entrenched in the Constitution, guaranteeing the political freedoms of conscience and religion, of thought, opinion and expression, of peaceful assembly and of association.
14. The Bill of Rights should include a provision requiring fair and equitable representation in the House of Commons and in the Provincial Legislatures.
15. The right to citizenship, once legally acquired, should be made inalienable under the Bill of Rights.
16. The individual person should be constitutionally protected in his life, liberty and the security of his person so as not to be deprived thereof except in accordance with the principles of fundamental justice.
17. The individual person should be constitutionally protected against the arbitrary seizure of his property, except for the public good and for just compensation.
18. The Constitution should prohibit discrimination by reason of sex, race, ethnic origin, colour or religion by proclaiming the right of the individual to equal treatment by law.
19. Discrimination in employment, or in membership in professional, trade or other occupational associations, or in obtaining public accommodation and services, or in owning, renting or holding property should also be declared contrary to the Bill of Rights.
20. Other provisions already contained in the Canadian Bill of Rights (1960) protecting legal rights should also be included in the Constitutional Bill of Rights: protection against unreasonable searches and seizures, the right to be informed promptly of the reason for arrest, the right to counsel, the right to habeas corpus, protection against self-crimination, the right to a fair hearing, the right to be presumed innocent and not to be denied reasonable bail without just cause, the right to an interpreter, the proscribing of retroactive penal laws or punishments, and the right not to be subjected to cruel and unusual punishment.
21. The rights and freedoms recognized by the Bill of Rights should not be interpreted as absolute and unlimited, but should rather be exercisable to the extent that they are reasonably justifiable in a democratic society.

## DRAFT PROCLAMATION (1976)

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None specified

PREMIERS' CONFERENCE (1976)

None specified

DRAFT RESOLUTION (1977)

None specified

BILL C-60 (1978)

III RIGHTS AND FREEDOMS WITHIN  
THE CANADIAN FEDERATION

(a) *Introductory*

*Canadian  
Charter of  
Rights and  
Freedoms*

5. The provisions of this division, which may be cited collectively as the *Canadian Charter of Rights and Freedoms*, are founded on the conviction and belief, affirmed by this Act, that in a free and democratic society there are certain rights and freedoms which must be assured to all of the people of that society as well as to people within that society individually and as members of particular groups, and which must, if they are to endure, be incapable of being alienated by the ordinary exercise of such legislative or other authority as may be conferred by law on its respective institutions of government.

5. New. This section expresses the conviction that certain rights should be incapable of being alienated by ordinary legislative procedures and s. 131 sets out the process whereby those rights would be constitutionalized federally and provincially and then be entrenched. (See also the Introduction hereto, category 2.)

*(b) Political and Legal Rights  
and Freedoms*

Fundamental  
rights and  
freedoms

6. It is accordingly declared that, in Canada, every individual shall enjoy and continue to enjoy the following fundamental rights and freedoms:

- freedom of thought, conscience and religion;
- freedom of opinion and expression;
- freedom of peaceful assembly and of association;
- freedom of the press and other media for the dissemination of news and the expression of opinion and belief;
- the right of the individual to life, and to the liberty and security of his or her person, and the right not to be deprived thereof except by due process of law;
- the right of the individual to the use and enjoyment of property, and the right not to be deprived thereof except in accordance with law; and
- the right of the individual to equality before the law and to the equal protection of the law.

Individual legal  
rights

7. In addition to the fundamental rights and freedoms declared by section 6, it is further declared that, in Canada, every individual shall enjoy and continue to enjoy:

- the right to be secure against unreasonable searches and seizures;
- the right not to be arbitrarily detained, imprisoned or exiled;
- the right, as an individual who has been arrested or detained,
  - (i) to be informed promptly of the reasons for his or her arrest or detention,
  - (ii) to retain and instruct counsel without delay, and
  - (iii) to the remedy by way of *habeas corpus* for the determination of the validity of his or her detention and for his or her release if the detention is not lawful;
- the right not to give evidence before any court, tribunal, commission, board or other authority, if the individual is denied counsel, protection against self-crimination or other constitutional safeguards;

6-7. Sections 6 and 7 declare the political and legal rights and freedoms. These are individual rights and are, with some modifications, essentially those now found in ss. 1 and 2 of the *Canadian Bill of Rights*.

6. In section 6,

- Freedom of “religion” is expanded from the Bill of Rights to include “thought and conscience”.
- Freedom of “opinion”, etc., enlarges the prior freedom of “speech” to encompass not only the right to express one’s views but also the right to hold those views.
- Freedom of “peaceful assembly”, etc., adds the qualification “peaceful” to the previous freedom.
- Freedom of the “press”, etc., would make it clear that other media of public communication are free to disseminate news, views and beliefs.
- The right to “life”, “liberty”, etc., is not changed.
- The right to the “use and enjoyment” of property adds “use” to the prior right and permits deprivation “in accordance with law” rather than “by due process of law”.
- The “protection of the law” becomes the “equal protection of the law” to give the concept a broader meaning, both as a substantive and as a procedural right.

7. The rights set out in section 7 constitute a continuation of the rights at present contained in s. 2 of the *Canadian Bill of Rights*, with new additions. These are the right to be secure against unreasonable searches and seizures, and the right of a person charged with an offence not to be found guilty in respect of an act or omission that was not an offence when done or not done, or to be subjected to punishment more severe than that applicable when the offence was committed.

- the right to the assistance of an interpreter in any proceedings before a court, tribunal, commission, board or other authority in which the individual is involved or is a party or witness, if he or she does not understand or speak the language in which the proceedings are conducted;
- the right to a fair hearing, in accordance with the principles of fundamental justice, for the determination of the individual's rights or obligations;
- the right, as an individual who has been charged with an offence, to be presumed innocent until proven guilty in a fair and public hearing by an independent and impartial tribunal, not to be denied reasonable bail without just cause having been established, not to be found guilty of the offence on account of any act or omission that at the time of such act or omission did not constitute an offence, and, if found guilty of the offence, not to be subjected to a punishment more severe than that applicable at the time the offence was committed; and
- the right not to be subjected to any cruel and unusual treatment or punishment.

*(c) Rights Within Canada of  
Canadian Citizens*

Rights of  
individuals as  
citizens

8. Every citizen of Canada, wherever the place of his or her residence or domicile, previous residence or domicile, or birth, has

- the right to move to and take up residence in any province or territory of Canada, and in consequence thereof to enjoy the equal protection of the law within that province or territory in the matter of his or her residence therein; and
- the right to acquire and hold property in, and to pursue the gaining of a livelihood in, any province or territory of Canada;

subject to any laws of general application in force in that province or territory but in all other respects subject only to such limitations on his or her exercise or enjoyment of those rights as are reasonably justifiable otherwise than on the basis of the place of his or her residence or domicile, previous residence or domicile, or birth.

8. Section 8 would create two new rights for citizens. The first right is that of a citizen who moves from one province to another to enjoy the same legal benefits as other residents of the province, subject to reasonable limitations (e.g. a period of residence to acquire eligibility to vote). The second right is that of a citizen to own property and seek a livelihood in any province or territory of Canada, subject to general laws applicable to residents of that province or territory (e.g. laws respecting the payment of taxes and the terms and conditions of employment).

Rights and freedoms to be enjoyed without discrimination

*(d) Non-discrimination*

9. The rights and freedoms declared by sections 6, 7 and 8 of this Charter shall be enjoyed without discrimination because of race, national or ethnic origin, language, colour, religion, age, or sex.

*(e) Elections and Elected Legislatures*

Democratic rights of citizens

10. The principles of free and democratic elections to the House of Commons of Canada and to the legislative assembly of each province, including the principle of universal suffrage for that purpose, are fundamental principles of the Constitution of Canada; more particularly no citizen of Canada shall, because of his or her race, national or ethnic origin, language, colour, religion, or sex, be denied the right to vote in an election of members of the House of Commons of Canada or of the legislative assembly of a province, or be disqualified from membership therein.

Duration of elected legislative bodies

11. (1) Every House of Commons of Canada and legislative assembly of a province shall continue for five years, or in the case of a legislative assembly of a province for five or such lesser number of years as is provided for by the constitution of the province, from the date of the return of the writs for the choosing of its members and no longer, subject to its being sooner dissolved in accordance with law or the procedure recognized by accepted usage therefor.

Continuation in special circumstances

(2) Notwithstanding subsection (1), in time of real or apprehended war, invasion or insurrection, a House of Commons may be continued by the Parliament of Canada and a legislative assembly of a province may be continued by the legislature thereof beyond the time limited therefor by or under subsection (1), if such continuation is not opposed by the votes of more than one-third of the members of the House of Commons or the legislative assembly, as the case may be.

9. The individual rights and freedoms under ss. 6, 7 and 8 are to be enjoyed not only in absolute terms but also without discrimination based on race, national or ethnic origin, language, colour, religion, age or sex. These prohibited grounds of discrimination derive from s. 1 of the *Canadian Bill of Rights* except for language and age which are new.

10-12. These sections declare certain fundamental democratic rights. These rights are partly individual (s. 10) and partly collective (ss. 11 and 12). (See s. 27.)

10. New. Section 10 states the principle that there shall be free and democratic elections based on universal suffrage and also that the right of citizens to participate in the democratic process shall not be denied on certain listed grounds. The prohibited grounds are the same as those listed in s. 9 except that age is omitted to allow for minimum voting age laws.

11. Section 11 modifies the present ss. 50 and 85. It would necessitate federal and provincial elections every five years (except in time of real or apprehended war, invasion or insurrection). (See also the present s. 91, head 1.)

Annual sessions  
of elected  
legislative  
bodies

**12.** There shall be a session of the Parliament of Canada and of the legislature of each province at least once in every year, so that twelve months shall not intervene between its last sitting in one session and its first sitting in the next.

*(g) Generally Applicable Provisions*

Laws not to  
apply so as to  
abrogate  
declared rights  
and freedoms

**23.** To the end that full effect may be given to the individual rights and freedoms declared by this Charter, it is hereby further proclaimed that, in Canada, no law shall apply or have effect so as to abrogate, abridge or derogate from any such right or freedom.

Definition and  
enforcement of  
rights and  
freedoms where  
no other  
remedy  
available

**24.** Where no other remedy is available or provided for by law, any individual may, in accordance with the applicable procedure of any court in Canada of competent jurisdiction, request the court to define or enforce any of the individual rights and freedoms declared by this Charter, as they extend or apply to him or her, by means of a declaration of the court or by means of an injunction or similar relief, accordingly as the circumstances require.

Justifiable  
limitations

**25.** Nothing in this Charter shall be held to prevent such limitations on the exercise or enjoyment of any of the individual rights and freedoms declared by this Charter as are justifiable in a free and democratic society in the interests of public safety or health, the interests of the peace and security of the public, or the interests of the rights and freedoms of others, whether such limitations are imposed by law or by virtue of the construction or application of any law.

Rights not  
declared by  
Charter,  
including those  
of native people  
under Royal  
Proclamation

**26.** Nothing in this Charter shall be held to abrogate, abridge or derogate from any right or freedom not declared by it that may

**12.** Section 12 modifies the present ss. 20 and 86. It would require, as at present, at least one session each year of Parliament and the legislatures.

**23-29.** These sections are all new and provide guidance as to how the rights and freedoms declared by the Charter would apply.

**23.** No law shall derogate from the individual rights and freedoms assured by the Charter. (But also see s. 25.)

**24.** Where there is no other remedy, a person may ask a court to define or enforce an individual right or freedom. (See s. 27.)

**25.** Some limitations on the exercise of individual rights and freedoms may remain justifiable (e.g. in the interest of public safety or health).

**26.** The Charter does not derogate from existing rights and freedoms, including those of native

Identification of declared individual rights and freedoms

27. For greater certainty for the purposes of this Charter, the individual rights and freedoms declared by this Charter are those assured by or by virtue of sections 6 to 10, 14, 16, 19 and 21.

Legislative authority not extended

29. Nothing in this Charter shall be held to confer any legislative authority on any competent body or authority in that behalf in Canada, except as expressly contemplated by this Charter.

Initial application of Canadian Charter of Rights and Freedoms

131. (1) Until such time as this subsection is repealed by subsection (4), the provisions of the *Canadian Charter of Rights and Freedoms* as enacted by this Act shall be read and construed as extending only to matters coming within the legislative authority of the Parliament of Canada, except as otherwise provided by the legislature of any province acting under the authority conferred on it by the Constitution of Canada.

Approval of additional measures to be taken when agreed

(2) In order that effect may be given as soon as may be to the extension of the Charter referred to in subsection (1) to matters coming within the legislative authority of the legislatures of all the provinces equally as to matters coming within the legislative authority of the Parliament of Canada, as part of the Constitution of Canada, it is hereby declared and directed that, on and after the commencement of this Act and by virtue of its enactment by the Parliament of Canada, both Houses of the Parliament of Canada shall be deemed to have approved of a resolution for the amendment of the Constitution of Canada in the form and to the effect of the Charter referred to in subsection (1), which resolution may be taken up and dealt with by action as on a joint address or by proclamation, as the case may be, as and when it may lawfully be so taken up and dealt with in accordance with the procedure for such amendment then recognized by accepted usage, if there is then no procedure for that purpose expressly provided for by the Constitution of Canada, or in accordance with the procedure for that purpose expressly so provided for, if there is then such a procedure.

27. Section 27 lists the sections that contain individual rights and freedoms (i.e. those that can be defined or enforced under s. 24).

29. The Charter would not extend the legislative authority of Parliament or the provincial legislatures.

131. This section provides for the constitution- alization and entrenchment of the *Canadian Charter of Rights and Freedoms* and for matters consequential thereto. (See the Introduction hereto, category 2.)

(1) By virtue of subsection (1), the Charter would apply only to federal matters until such time as a province adopts it.

(2) Subsection (2) would authorize the taking of the steps necessary to secure the entrenchment of the Charter.

Provisions  
applicable when  
Charter  
extended to  
matters within  
provincial  
legislative  
authority

(3) From and after such time as it is provided by the legislature of any province, acting within the authority conferred on it by the Constitution of Canada, that the provisions of the *Canadian Charter of Rights and Freedoms* as enacted by this Act extend to matters coming within its legislative authority,

(a) the provisions of the Act of 1867 respecting the reservation of assent to Bills, the disallowance of Acts and the signification of pleasure on Bills reserved, as those provisions extend and are made applicable to the legislatures of the several provinces by virtue of and in the manner provided in section 90 of the Act of 1867, shall cease to extend and be applicable to the legislature of that province as if they were herein repealed or made inapplicable in terms to that province and its legislature; and

(b) where that province is Ontario, subsection 15(2) of this Act shall not apply so as to require the printing and publishing in English and French of any statutes of, or any revision or consolidation of statutes authorized by, the legislature of that province except any such statutes enacted after, or any such revision or consolidation authorized to have effect after, such day or days as that legislature shall have fixed therefor.

Full application  
of Charter

(4) At such time as the resolution deemed by subsection (2) to have been approved by both Houses of the Parliament of Canada has been taken up and dealt with as provided in that subsection and any further action required by law to give effect thereto has been taken,

(a) subsection 1 of this section is repealed;

(b) sections 20, 50, 55 to 57, 85 and 86 of the Act of 1867 are repealed;

(c) sections 55 to 57 of the Act of 1867 respecting the reservation of assent to Bills, the disallowance of Acts and the signification of pleasure on Bills reserved, as those sections extended and were applicable immediately before the commencement of this Act to the legislature of the

(3) Where a province adopts the Charter, the federal government would cease to be able to disallow statutes of that province. Also, because, upon adoption of the Charter, Ontario would be required by s. 15(2) to publish its statutes in French, as well as English, for the first time, some flexibility would be given as to the commencement of this requirement.

(4) When the Charter is entrenched, it would apply throughout Canada and s. (1), which limits it to federal matters, would be repealed. Also provisions of the Act of 1867 that relate to matters covered by the Charter, to the disallowance of federal and provincial legislation and to certain specified language rights in Quebec and Manitoba would be repealed.

several provinces by virtue of and in the manner provided in section 90 of the Act of 1867, cease to extend and apply thereto, and section 90 is repealed in so far as it relates to the matters provided for in this paragraph; and

(d) section 133 of the Act of 1867 and section 23 of the *Manitoba Act, 1870* are repealed.

Matters  
reserved for  
determination  
by territorial  
governments

(5) Notwithstanding anything in subsection (1), for the purposes of that subsection the legislative authority of the Parliament of Canada shall be deemed not to extend to the Yukon Territory or the Northwest Territories in relation to any matter provided for in sections 13 to 21 of the *Canadian Charter of Rights and Freedoms* that would not, if those territories were provinces of Canada, come within the legislative authority of Parliament, and in relation to any such matter the reference in subsection (1) to the legislature of any province acting under the authority conferred on it by the Constitution of Canada shall be read as extending to the Commissioner in Council of any territory of Canada acting within the authority which is hereby conferred on the Commissioner in Council by the Parliament of Canada.

(5) Pursuant to this subsection, the Commissioner in Council of the Yukon Territory or Northwest Territories would be given the same rights as a provincial legislature with respect to the adoption of the Charter.

## REGINA PREMIERS' CONFERENCE (1978)

Some provinces support the principle of constitutional entrenchment of basic rights; while others believe that, under our parliamentary system, individual rights are better protected by basic constitutional traditions and the ordinary legislative process.

Provinces are concerned over section 8 of the federal Bill and its potential interference with important provincial legislation respecting land ownership and other matters.  
(Extract from Communiqué)

LAMONTAGNE/MACGUIGAN REPORT (OCTOBER 1978)Recommendation 3.

A Canadian charter of Rights and Freedoms should form an integral part of the Constitution of Canada, but the proposed Charter should be redrafted.

Recommendation 4.

To ensure that the provisions of the proposed Charter are interpreted by the courts as overriding other legislation, clause 6, 7 and 23 should be redrafted.

Recommendation 5.

The proposed Charter should be revised to indicate more clearly the relationships among different clauses.

Recommendation 6.

Clause 7 should be redrafted to provide for the obligation to facilitate retention and instruction of counsel and for the protection against double jeopardy.

Recommendation 7.

Clause 8 of the proposed Charter should be deleted.

Recommendation 8.

Clause 24 should be redrafted to ensure that it requires the courts to provide a remedy where there is a denial of rights and that the remedy is adequate.

Recommendation 9.

Clause 25 should be replaced by a clause which exactly specifies permissible limitations on protected rights and freedoms by the War Measures Act or similar legislation, and the Government should be required to justify to Parliament the invocation of such legislation.

Recommendation 10.

Clause 26 should be redrafted to omit the reference to the Royal Proclamation of 1763.

Recommendation 11.

The proposed Charter should not prevent special programs on behalf of disadvantaged groups.

Recommendation 12

The proposed Charter should provide that people are entitled to reasonable access to documents of governments and government agencies.

CONSTITUTIONAL CONFERENCE (1978)

NOTE; The source of each extract is shown at the end in brackets.

. . . .

**V. CONCLUSION**

It will be apparent that many of the concerns relating to entrenchment have to do with both theoretical and practical problems attendant upon casting the members of the Supreme Court of Canada in the role of super-legislators. A relevant consideration, but as yet an unknown factor, has to do with the question of an amending formula for the constitution. And from the provincial viewpoint, concerns have been expressed that an activist Court might significantly reduce the scope of legislative action at present available to the provinces (e.g. McRuer Report).

Many of these concerns and difficulties would be reduced, if not entirely avoided, through the device of parallel federal and provincial statutory enactments, that is to say, a federal Bill of Rights applying to all federal laws (as is presently the case) supplemented by a provincial Bill of Rights applying to provincial laws. Under such an arrangement the "last word" remains with the elected members of legislative bodies.

At the same time, a number of the advantages offered by any bill of rights would be attained. Such a statutory charter can serve an educative function. It can operate upon the conscience of legislators, and it is unlikely that any government would take the political risk of overriding a judicial finding of conflict with a protected freedom without having very compelling reasons for doing so. The courts would still have an important role to play by publicly drawing attention to apparent violations of fundamental rights.

In summary, while the government of British Columbia believes that appropriate means should be taken to ensure the protection of the traditional individual rights and freedoms, it seeks the best method by which this may be achieved. For the reasons stated in this Paper, it has reservations about entrenching a charter of rights in the Constitution. Instead it is the view that those rights can best be assured through appropriate legislative action at both federal and provincial levels.

(Page 17 from "British Columbia's Constitutional Proposals, Paper No. 6 - A Bill of Rights and the Constitution of Canada." For a more complete analysis see full text available from the CICS.)

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29. That the protection of fundamental human rights continue to be the responsibility of Parliament and of the Provincial Legislatures, rather than a bill of rights entrenched in the Constitution.

(Page 25 from Alberta's position paper "Harmony in Diversity: A New Federalism for Canada." For a more complete analysis see full text available from the CICS.)

. . .

- ALLOW THE CULTURES OF CANADIANS FROM MANY LANDS TO FLOURISH SO THAT THE CONTRIBUTIONS OF OUR MULTICULTURAL HERITAGE CAN BE FULLY SHARED AMONG US.

RESPECT THE RIGHTS OF OUR NATIVE PEOPLE,  
THEY HAVE AN ESPECIALLY VALID CLAIM TO OUR  
UTMOST CONSIDERATION ON THIS MATTER, AND WE  
SHOULD ENSURE THAT THEY ARE CAREFULLY  
CONSULTED AS WE PROGRESS.

. . .

(Pages 13 and 14 from Ontario paper "Opening Statement by the Honourable William G. Davis")

ONT - EXTREME LEFT

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IN CONSIDERING THESE TWO LEGITIMATE POINTS OF VIEW,  
I HAVE COME TO THE UNQUALIFIED CONCLUSION THAT INDIVIDUAL  
RIGHTS MUST BE INCLUDED IN THE CONSTITUTION. SUCH RIGHTS  
SHOULD BE THOSE ABSOLUTELY ESSENTIAL TO THE MAINTENANCE OF  
OUR PARLIAMENTARY AND DEMOCRATIC SYSTEM OF GOVERNMENT, FOR IT  
IS ONLY BY MAINTAINING THIS SYSTEM THAT WE CAN CONTINUE TO  
ENJOY OUR TRADITIONAL RIGHTS AND FREEDOMS. THIS WAS OUR VIEW  
AT VICTORIA IN 1971. IT REMAINS OUR VIEW TODAY.

. . .

(Page 4 from Ontario paper "Individual Rights")

. . .

MOREOVER, RECOGNIZING THAT EDUCATION IS THE ONLY SECURE FOUNDATION ON WHICH LANGUAGE AND CULTURE DEVELOP, IT IS OUR BELIEF THAT, AT THIS POINT, THE RIGHT TO MINORITY LANGUAGE EDUCATION SHOULD BE EXPLICITLY GUARANTEED IN A NEW CONSTITUTION.

. . .

(Page 4 from Ontario paper "Language Rights")

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. . .

WITH RESPECT TO THE FEDERAL PROPOSAL TO INCLUDE IN THE CONSTITUTION A CHARTER OF RIGHTS, I HAVE ONLY TO STATE MY BASIC AGREEMENT WITH THE PRINCIPLES. NEW BRUNSWICK HAS ALREADY GIVEN AN INDICATION OF ITS POSITION ON THESE MATTERS THROUGH SUCH LEGISLATION AS OUR OFFICIAL LANGUAGES ACT AND OUR HUMAN RIGHTS ACT. I WOULD ONLY HAVE THE CONCERN THAT THE INTENT OF THESE PROVISIONS BE MADE AS CLEAR AS POSSIBLE SO THAT, IN FACT, CERTAIN RIGHTS OF ALL CANADIANS ARE INDEED BETTER SECURED AND LESS SUBJECT TO CONTROVERSY AND ARBITRARY JUDGEMENT. I DO ACKNOWLEDGE, HOWEVER, THAT THE PROVISIONS SET FORTH ARE GENERALLY REPRESENTATIVE OF THE FEELINGS OF MOST CANADIANS AND WORTHY OF INCLUSION IN ANY REFORM OF THEIR CONSTITUTION.

. . .

(Page 8 from New Brunswick's paper "Statement by the Honourable Richard Hatfield on the Constitution")

NS

THE CHARTER OF RIGHTS AND FREEDOMS:

It seems to us that rights and freedoms should not be incorporated into the Canadian constitution unless they apply with equal force to all Canadians wherever they reside. I submit that it is misleading to put into the Canadian constitution rights and freedoms of Canadian citizens which are binding on one or more governments but not on other governments. We believe that the proposed rights and freedoms should be considered very carefully and only those which all jurisdictions within this country are prepared to adopt should become part of the constitution.

(Page 4 from Nova Scotia paper "Address by the Honourable John M. Buchanan, Q.C.")

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. . .

In our view it is desirable to have a Charter of Rights and Freedoms included in the Constitution of Canada.

. . .

I believe it is a mistake to assume that tradition alone is the best guardian of freedom, especially as our society becomes increasingly depersonalized and adopts more rapidly and completely characteristics of a mass society.

. . .

. . . No doubt each of us here can recall examples of laws passed in our respective jurisdictions which encroached upon basic freedoms. In my opinion, had we been guided by a Charter of Rights and Freedoms there would have been a greater probability that such legislation would not have been conceived nor passed since it is more likely that such would have been recognized from the outset as being unconstitutional.

. . .

A Charter of Rights in our Constitution would be more than a law. It would become a statement of ideals that could influence the development of the thinking of young Canadians and new Canadians.

. . .

Prince Edward Island is prepared to consider the proposal that property rights be protected by the constitution.

. . .

Prince Edward Island would definitely maintain powers to control the use of its resources but all relevant legislation and regulations, such as those covering the use of land, would be applied to all Canadians equally.

. . .

. . .

Consideration of such a proposal is contingent upon our being convinced that the people of Prince Edward Island will not experience restrictions in any other province other than those laws which are generally applied to all other citizens of Canada.

. . .

(Pages 2, 3, 4 and 6 from Prince Edward Island's paper "Statement by the Honourable W. Bennett Campbell")



## LANGUAGE RIGHTS



#### IV. LANGUAGE RIGHTS

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## B.N.A. ACT

133. Either the English or the French Language may be used by any Person in the Debates of the Houses of the Parliament of Canada and of the Houses of the Legislature of Quebec; and both those Languages shall be used in the respective Records and Journals of those Houses; and either of those Languages may be used by any Person or in any Pleading or Process in or issuing from any Court of Canada established under this Act, and in or from all or any of the Courts of Quebec.

Use of English  
and French  
Languages.

The Acts of the Parliament of Canada and of the Legislature of Quebec shall be printed and published in both those Languages.

## VICTORIA CHARTER (1971)

Art. 10. English and French are the official languages of Canada having the status and protection set forth in this Part.

Art. 11. A person has the right to use English and French in the debates of the Parliament of Canada and of the Legislatures of Ontario, Quebec, Nova Scotia, New Brunswick, Manitoba, Prince Edward Island and Newfoundland.

Art. 12. The statutes and the records and journals of the Parliament of Canada shall be printed and published in English and French; and both versions of such statutes shall be authoritative.

Art. 13. The statutes of each Province shall be printed and published in English and French, and where the Government of a Province prints and publishes its statutes in one only of the official languages, the Government of Canada shall print and publish them in the other official language; the English and French versions of the statutes of the Provinces of Quebec, New Brunswick and Newfoundland shall be authoritative.

Art. 14. A person has the right to use English and French in giving evidence before, or in any pleading or process in the Supreme Court of Canada, any courts established by the Parliament of Canada or any court of the Provinces of Quebec, New Brunswick and Newfoundland, and to require that all documents and judgments issuing from such courts be in English or French, and when necessary a person is entitled to the services of an interpreter before the courts of the other Provinces.

Art. 15. An individual has the right to the use of the official language of his choice in communications between him and the head or central office of every department and agency of the Government of Canada and of the Governments of the Provinces of Ontario, Quebec, New Brunswick, Prince Edward Island and Newfoundland.

Art. 16. A Provincial Legislative Assembly may, by resolution, declare that any part of Articles 13, 14, and 15 that do not expressly apply to that Province shall apply to the Legislative Assembly, and to any of the provincial courts and offices of the provincial departments and agencies according to the terms of the resolution, and thereafter such parts shall apply to the Legislative Assembly, courts and offices specified according to the terms of the resolution; and any right conferred under this Article may be abrogated or diminished only in accordance with the procedure prescribed in Article 50.

Art. 17. A person has the right to the use of the official language of his choice in communications between him and every principal office of the departments and agencies of the Government of Canada that are located in an area where a substantial proportion of the population has the official language of his choice as its mother tongue, but the Parliament of Canada may define the limits of such areas and what constitutes a substantial proportion of the population for the purposes of this Article.

Art. 18. In addition to the rights provided by this Part, the Parliament of Canada and the Legislatures of the Provinces may, within their respective legislative jurisdictions, provide for more extensive use of English and French.

Art. 19. Nothing in this Part shall be construed as derogating from or diminishing any legal or customary right or privilege acquired or enjoyed either before or after the coming into force of this Part with respect to any language that is not English or French.

## SPECIAL JOINT COMMITTEE ON THE CONSTITUTION (1972)

22. French and English should be constitutionally entrenched as the two official languages of Canada.
23. The Constitution should recognize:
  - (a) the right of any person to use either official language in the Federal and Provincial Legislatures and the Territorial Councils;
  - (b) the right to have access in both official languages to the legislative records, journals, and enactments of Canada, New Brunswick, Ontario, Quebec and the Territories;
  - (c) the right to use either official language in dealing with judicial or quasi-judicial Federal bodies or with courts in New Brunswick, Ontario, Quebec and the Territories;
  - (d) the right to communicate in either official language with Federal departments and agencies and with provincial departmental head offices or agency head offices in New Brunswick, Ontario, Quebec and the Territories.
24. All of the rights in recommendation 23 (b) (c) and (d) should also be exercisable in:
  - (a) any Province where each language is the mother tongue of ten per cent of the population;
  - (b) in any Province where the legislature declares French and English the official languages of the Province.
25. The Constitution should recognize parents' right to have English or French provided as their child's main language of instruction in publicly supported schools in areas where the language of their choice is chosen by a sufficient number of persons to justify the provision of the necessary facilities.
26. We support the general objective of making French the working language in Quebec. We hope that through the studies being carried out in Quebec on this matter, this objective can be reached with due respect for certain Quebec Anglophone institutions, and taking into account the North American and world reality.
27. The preamble to the Constitution should formally recognize that Canada is a multicultural country.
28. The Constitution should explicitly recognize the right of Provincial Legislatures to confer equivalent status with the English and French languages on other languages. Federal financial assistance to support the teaching or use of other languages would be appropriate.

## DRAFT PROCLAMATION (1976)

### Part III

#### Language Rights

Art. 30 English and French are the official languages of Canada, but no provision in this Part shall derogate from any right, privilege, or obligation existing under any other provision of the Constitution.

Art. 31 A person has the right to use English and French in the debates of the Parliament of Canada.

Art. 32 The statutes and the records and journals of the Parliament of Canada shall be printed and published in English and French; and both versions of such statutes are authoritative.

Art. 33 A person has the right to use English and French in giving evidence before, or in any pleading or process in the Supreme Court of Canada and any courts established by the Parliament of Canada, and to require that all documents and judgments issuing from such courts be in English or French.

Art. 34 An individual has the right to the use of the official language of his choice in communications between him and the head or central office of every department and agency of the Government of Canada.

Art. 35 A provincial Legislative Assembly may, by resolution, declare that provisions similar to those of any part of Articles 32, 33 and 34 shall apply to the Legislative Assembly, and to any of the provincial courts and offices of the provincial departments and agencies according to the terms of the resolution, and thereafter such parts apply to the Legislative Assembly, courts and offices specified according to the terms of the resolution; and any right conferred under this Article may be abrogated or diminished only in accordance with the procedure prescribed in Article 2.

Art. 36 A person has the right to the use of the official language of his choice in communications between him and every principal office of the departments and agencies of the Government of Canada that are located in an area where a substantial proportion of the population has the official language of his choice as its mother tongue, but the Parliament of Canada may define the limits of such areas and what constitutes a substantial proportion of the population for the purposes of this Article.

Art. 37 In addition to the rights provided by this Part, the Parliament of Canada may, within its legislative jurisdiction, provide for more extensive use of English and French.

### Part IV

#### Protection of the French Language and Culture

Art. 38 The Parliament of Canada, in the exercise of powers allotted to it under the Constitution of Canada, and the Government of Canada, in the exercise of powers conferred upon it by the Constitution of Canada and by laws enacted by the Parliament of Canada, shall be guided by, among other considerations for the welfare and advantage of the people of Canada, the knowledge that a fundamental purpose underlying the federation of Canada is to ensure the preservation and the full development of the French language and the culture based on it and neither the Parliament nor the Government of Canada, in the exercise of their respective powers, shall act in a manner that will adversely affect the preservation and development of the French language and the culture based on it.

### Part V

#### Federal-Provincial Agreements

Art. 40 (1) In order to ensure a greater harmony of action by governments, and especially in order to reduce the possibility of action that could adversely affect the preservation and development in Canada of the French language and the culture based on it, the Government of Canada and the Governments of the Provinces or of any one or more of the Provinces may, within the limits of the powers otherwise accorded to each of them respectively by law, enter into agreements with one another concerning the manner of exercise of such powers, particularly in the fields of immigration, communications and social policy.

(2) Nothing in this Article shall be held to limit or restrict any authority conferred either before or after the coming into force of this Proclamation upon the Government of Canada or the Government of a Province to enter into agreements within the limits of the powers otherwise accorded to it by law.

PREMIERS' CONFERENCES (1976)

- (a) Unanimous agreement with respect to the "confirmation of the language rights of English and French generally along the lines discussed in Victoria in 1971."
- (b) With regard to culture, the Premier of Alberta's letter to the Prime Minister of Canada states:
  - a) Culture - You will recall that culture was referred to in Parts IV and VI of the draft proclamation. The interprovincial discussions on culture focused on the addition of a new concurrent power to be included in the Constitution. This power would refer to arts, literature and cultural heritage and would be subject to provincial paramountcy. On this matter, there was a high degree of consensus on the principle and considerable progress was made with respect to a solution. There was also, however, firm opinion from one province that the provinces and the federal government should have concurrent jurisdictional powers in the area.

DRAFT RESOLUTION (1977)

- Art. 14      English and French are the official languages of Canada having the status and protection set forth in this Part, but no provision in this Part shall derogate from any right, privilege, or obligation existing under any other provision of the Constitution.
- Art. 15      A person has the right to use English or French in the debates of the Parliament of Canada.

- Art. 16        The statutes and the records and journals of the Parliament of Canada shall be printed and published in English and French; and both versions of such statutes are equally authoritative.
- Art. 17        A person has the right to use English or French in giving evidence before, or in any pleading or process in the Supreme Court of Canada or any court established by the Parliament of Canada, and to require that any document or judgment issuing from any such court be in English or French.
- Art. 18        A member of the public has the right to the use of the official language of his choice in communications between him and the head or central office of every department and agency of the Government of Canada.
- Art. 19        A provincial Legislative Assembly may, by resolution, declare that provisions similar to those of any part of Articles 15, 16, 17 and 18 shall apply to the Legislative Assembly, and to any of the provincial courts and offices of the provincial departments and agencies according to the terms of the resolution, and thereafter such parts apply to the Legislative Assembly, courts and offices specified according to the terms of such resolution; and any right conferred under this Article may be abrogated or diminished only in accordance with the procedure described in Article 1 of this Proclamation.

Art. 20      A member of the public has the right to the use of the official language of his choice in communications between him and every principal office of a department or agency of the Government of Canada that is located in an area where a substantial proportion of the population has the official language of his choice as its mother tongue, but the Parliament of Canada may define the limits of such areas and what constitutes a substantial proportion of the population for the purposes of this Article.

Art. 21      The Parliament of Canada, in the exercise of powers assigned to it by the Constitution of Canada, and the Government of Canada, in the exercise of powers conferred on it by the Constitution of Canada or by any law enacted by Parliament, shall be guided, among other considerations for the welfare and advantage of the people of Canada, by the knowledge that a fundamental purpose underlying the Canadian federation is to ensure that the diverse cultures of its people may continue to be respected within that federation and by its institutions, and by the appreciation, as a consequence, of the importance of the two official languages of Canada as the languages of cultural expression used by those for whom the official languages of Canada are mother tongues; accordingly neither the Parliament of Canada nor the Government of Canada, in exercising the respective powers so assigned to or conferred on them, shall act in a manner that will adversely affect the preservation of either of the two official languages of Canada.

STATEMENT BY PREMIER OF ONTARIO TO TASK FORCE ON  
CANADIAN UNITY (NOVEMBER 1977)

. . . I WOULD PROPOSE  
THAT WE CONSIDER THE ESTABLISHMENT OF AN INTER-  
PROVINCIAL ADVISORY COMMISSION ON LANGUAGES WHICH  
WOULD KEEP ALL GOVERNMENTS INFORMED ON THE PROGRESS  
WE ARE MAKING AND THE GAPS REMAINING TO BE FILLED.  
IT COULD ALSO BE THE SOURCE OF NEW IDEAS AIMED AT  
GIVING CANADIANS EFFECTIVE WAYS OF USING THEIR  
MOTHER TONGUE AND OF LEARNING TO COMMUNICATE WITH  
EACH OTHER. AS AN ASIDE, PERHAPS SUCH A COMMISSION  
MIGHT REALLY MAKE A FURTHER CONTRIBUTION TO  
ENHANCING OUR HERITAGE AND THE RELATIONSHIPS  
AMONG US BY GIVING OUR CHILDREN AND THEIR PARENTS  
A SINGLE, AGREED UPON VERSION OF OUR HISTORY'

. . .

ST. ANDREWS PREMIERS' CONFERENCE (1977)

STATEMENT ON LANGUAGE

Recognizing our concern for the maintenance and, where indicated, development of minority language rights in Canada; and

Recognizing that education is the foundation on which language and culture rest:

The Premiers agree that they will make their best efforts to provide instruction in education in English and French wherever numbers warrant.

The Premiers direct the Council of Education Ministers to meet as soon as possible to review the state of minority language education in each province.

The Premiers ask further that the Council of Education Ministers report to each Premier within six months. Following this, each Province would undertake to ensure such provision of Canadian minority language education, and would then make a declaration of the policy plan and programme to be adopted by the Government of that Province, in this respect.

PREMIERS' CONFERENCE, MONTREAL (FEBRUARY 1978)

Recognizing their concern for the maintenance and development of minority language education rights throughout Canada as expressed in St. Andrews and recognizing that education is the foundation on which language and culture rest;

The Premiers took note of the significant progress accomplished during the last years, as highlighted in the Ministers' of Education's report and further recognize the need for continued progress.

The Premiers reaffirm their intention to make their best efforts to provide education to their English or French speaking minorities, and in order to ensure appropriate levels of services, they also agree that the following principles should govern the availability of, as well as the accessibility to, such services;

- (i) Each child of the French-speaking or English-speaking minority is entitled to an education in his or her language in the primary or the secondary schools in each province wherever numbers warrant
- (ii) It is understood, due to exclusive jurisdiction of provincial governments in the field of education, and due also to wide cultural and demographic differences, that the implementation of the foregoing principle would be as defined by each province.

The Premiers requested the Council of Ministers of Education to assume the responsibility to suggest ways and means of achieving further progress in minority language education and second language instruction consistent with the progress thus far made.

(Extract from Communiqué)

## BILL C-60 (1978)

### *(f) Official Languages and Language Rights*

Purposes for which English and French declared to be official languages

13. The English and French languages are the official languages of Canada for all purposes declared by the Parliament of Canada or the legislature of any province, acting within the legislative authority of each respectively.

Proceedings in Parliament

14. (1) Any individual has the right to use English or French, as he or she may choose, in any of the debates or other proceedings of the Parliament of Canada.

Proceedings in legislatures

(2) Any individual has the right to use English or French, as he or she may choose, in any of the debates or other proceedings of the legislative assembly of any province.

Statutes and records, etc., of Parliament

15. (1) The statutes and the records and journals of the Parliament of Canada shall be printed and published in English and French.

Statutes and records, etc., of legislatures

(2) The statutes and the records and journals of the legislatures of Ontario, Quebec and New Brunswick shall be printed and published in English and French, and all or any of the statutes and the records and journals of the legislature of any other province shall be printed and published in both of those languages or in either of them, accordingly as its legislature may prescribe.

Both versions of statutes authoritative

(3) Where the statutes of any legislative body described in subsection (1) or (2) are printed and published in English and French, both language versions thereof shall be equally authoritative.

13. Section 13 declares English and French to be the official languages of Canada for all such purposes as may be declared by Parliament or the legislature of any province. It derives from s. 2 of the *Official Languages Act* and from s. 2 of the *Official Languages of New Brunswick Act* but is new in that it envisages language legislation in additional provinces.

14. (1) The right to use English or French in debates of Parliament was granted by the present s. 133. The Charter would extend the right to cover other proceedings (e.g. in Parliamentary committees).

(2) The proposed right to use English or French in provincial legislative assemblies is new as regards its application to some provinces. (See however the present s. 133 and s. 23 of the *Manitoba Act, 1870* and s. 3 of the *Official Languages of New Brunswick Act*.)

15. The requirement to publish federal and some provincial statutes, etc., in English and French derives from the present s. 133 which applies only to the Parliament of Canada and to Quebec. The proposal would extend this constitutional requirement to two additional provinces, namely, New Brunswick and Ontario, upon its adoption by those provinces. It would also make the publication of statutes, etc., in both languages optional in the remaining provinces, which have much smaller bilingual populations. Because Ontario does not now have such a requirement, flexibility as to the actual commencement of bilingual publication subsequent to adoption of the Charter by the province is provided by s. 131(3)(b).

Proceedings in Supreme Court and courts constituted by Parliament

16. (1) Either English or French may be used by any person in, or in any pleading or process in or issuing from, the Supreme Court of Canada or any court constituted by the Parliament of Canada.

Proceedings in courts of Ontario, Quebec and New Brunswick

(2) Either English or French may be used by any person in, or in any pleading or process in or issuing from, any court of Ontario, Quebec or New Brunswick.

Proceedings throughout Canada in criminal matters and for offences where loss of liberty is issue

(3) In proceedings in any court in Canada —in which, in a criminal matter, the court is exercising any criminal jurisdiction conferred on it by or pursuant to an Act of the Parliament of Canada, or

—in which, in a matter relating to an offence for which an individual charged with that offence is subject to be imprisoned if he or she is convicted thereof, the court is exercising any jurisdiction conferred on it by or pursuant to an Act of the legislature of any province,

any individual giving evidence before the court has the right to be heard in English or French, as he or she may choose, and in being so heard, not to be placed at a disadvantage by not being heard, or being unable to be heard, in the other of those languages.

Application of rules for regulating procedure, including notice

17. Nothing in section 16 shall be held to preclude the application, to or in respect of proceedings in any court described in subsection 16(2), or to or in respect of any proceedings described in subsection 16(3), of such rules for regulating the procedure in any such proceedings, including rules respecting the giving of notice, as may be prescribed by any competent body or authority in that behalf pursuant to law for the effectual execution and working of the provisions of either of those subsections.

Existing rights not abrogated

18. Nothing in sections 14 to 17 shall be held to abrogate, abridge or derogate from any right, privilege or obligation with respect to the English and French languages, or either of them, that exists or is continued by virtue of any other provision of the Constitution of Canada.

16. (1) Subsection (1) would confirm English and French language rights in the Supreme Court and the courts established by Parliament. It is derived from the present s. 133.

(2) The right provided for by s. 16(1) in respect of courts established by Parliament would also be exercisable in the courts established by Ontario, Quebec and New Brunswick. It derives from the right provided for in respect of Quebec in the present s. 133 and is new as it would relate to Ontario and partly new as it would relate to New Brunswick.

(3) Subsection (3) establishes a national standard of language rights applicable to persons giving evidence in any court in criminal proceedings or in proceedings for provincial offences where loss of liberty is at issue. These rights derive from s. 11 of the *Official Languages Act* but are new to the extent that they apply to proceedings relating to provincial offences.

17. By virtue of s. 17, the exercise in provincial courts of the rights provided for by s. 16 would be subject to rules of procedure such as a requirement that notice be given.

18. New. By s. 18, existing language protections provided for by the present Constitution (e.g. those set out in the present s. 133 and s. 23 of the *Manitoba Act, 1870*) would be continued. However, upon the entrenchment of the Charter, the latter mentioned provisions would be repealed. (See s. 131(4)(d) of the Bill.)

Communica-  
tions by  
members of  
public with  
federal  
governmental  
and other  
institutions

19. (1) Any member of the public in Canada has the right to use English or French, as he or she may choose, in communicating with the head or central office of any department or agency of the executive government of and over Canada, or of any judicial, quasi-judicial or administrative body or Crown corporation established by or pursuant to a law of Canada, wherever that office is located, or in communicating with any other principal office of any such institution where that office is located within an area of Canada in which it is determined, in such manner as may be prescribed or authorized by the Parliament of Canada, that a substantial number of persons within the population use that language.

Communica-  
tions with  
provincial  
institutions

(2) Any member of the public in any province has the right to use English or French, as he or she may choose, in communicating with any principal office of a department or agency of the executive government of that province, or of a judicial, quasi-judicial or administrative body or Crown corporation established by or pursuant to a law of that province, where that office is located within an area of that province in which it is determined, in such manner as may be prescribed or authorized by the legislature of that province, that a substantial number of persons within the population use that language.

Rights not to be  
limited

20. Nothing in sections 13 to 19 shall be held to limit the right of the Parliament of Canada or the legislature of a province, acting within the authority of each respectively pursuant to law, to provide for more extensive use of both the English and French languages; and nothing in those sections shall be held to derogate from or diminish any right, based on language, that is assured by virtue of section 9 or 10, or to derogate from or diminish any legal or customary right or privilege acquired or enjoyed either before or after the commencement of this Act with respect to any language that is not English or French.

19. Section 19 would give to members of the public the right to use either English or French in communications with major federal governmental and other institutions and, to a lesser extent, with some provincial institutions. In certain cases, Parliament or the legislature would be empowered to specify the extent of this right. The section derives from ss. 9 and 10 of the *Official Languages Act* and s. 10 of the *Official Languages of New Brunswick Act*. It is new in its proposed application to the provinces other than New Brunswick although some rights in this connection exist by law in Quebec and in practice elsewhere.

20. Section 20 is new. It stipulates that the language rights assured by the Charter are minimum ones and may be extended, and that existing rights and privileges relating to languages other than English and French are not diminished.

Language of  
instruction in  
schools

21. (1) Where the number of children in any area of a province in respect of whom notice has been given as contemplated by this section, warrants the provision of the facilities required to give effect to the right provided for by this section, any parent who is a citizen of Canada resident within that area and whose primarily spoken language is not that of the numerically larger of the groups comprising those persons resident in that province whose primarily spoken languages are either English or French, has the right to have his or her children receive their schooling in the language of basic instruction that is the primarily spoken language of the numerically smaller of those groups, in or by means of facilities that are provided in that area out of public funds and that are suitable and adequate for that purpose.

Notice

(2) The exercise by any parent of the right provided for by this section shall be subject to such reasonable requirements respecting the giving of notice by that parent of his or her intended exercise thereof as may be prescribed by the law of the province in which that parent resides.

Reasonable  
provisions for  
determining  
whether  
numbers  
warrant

(3) Nothing in this section shall be held to limit the authority of the legislature of any province to make such provisions as are reasonable for determining, either generally or in any particular case or classes of cases, whether or not the number of children in any area of that province in respect of whom notice has been given as contemplated by this section, warrants the provision of the facilities required to give effect to the right provided for by this section.

Rights, etc., not  
affected

(4) Nothing in this section shall be held to derogate from or diminish any legal or customary right or privilege acquired or enjoyed in any province either before or after the commencement of this Act to have any child receive his or her schooling in the language of basic instruction that is the primarily spoken language of the numerically larger of the groups referred to in subsection (1) within that province, or to limit any authority conferred or obligation imposed either before or after that time by the law of that province to require any child, during any period while that child is receiving his or her schooling in any language of basic instruction that is not that primarily spoken language, to be given instruction in the use of that primarily spoken language as part of his or her schooling in that province.

21. Section 21 would, upon adoption by a province, create a new right relating to the language of instruction in the schools of that province. In any area of an English speaking province in which there are sufficient francophones to warrant the provision of basic school instruction in French, any resident non-anglophone parents who are citizens of Canada would have the right to have their children receive their schooling in French in public school facilities. The same right would apply in Quebec to entitle resident non-francophone citizens to have their children receive their schooling in English. The right would be subject to the giving of notice and to reasonable provincial determination of whether there are sufficient eligible children to warrant the provision of facilities. This new right would not limit existing or future rights of minorities to choose to have their children receive their schooling in the language primarily spoken in the province, or limit any such right or obligation to have their children instructed in the use of the primarily spoken language.

## Interpretation

(5) The expression “parent” in this section includes a person standing in the place of a parent.

Preservation of English and French as languages spoken or enjoyed by identifiable minority groups

22. In furtherance of

- the appreciation by Canadians that the preservation of both English and French as the principal spoken languages of Canadians is vital to the prospering of the Canadian federation within the larger North American society, and
- the resolve of Canadians that none of the institutions of government of the Canadian federation, acting within the legislative authority of each individually pursuant to law, should act in such a manner as to affect adversely the preservation of either English or French as the language spoken or otherwise enjoyed by any group of individuals constituting an identifiable and substantial linguistic community in any area of Canada within its jurisdiction,

it is hereby proclaimed that no law made by any such institution after this Charter extends to matters within its legislative authority shall apply or have effect so as to affect adversely the preservation of either English or French as the language spoken or otherwise enjoyed by any such group of individuals.

*(g) Generally Applicable Provisions*

Laws not to apply so as to abrogate declared rights and freedoms

23. To the end that full effect may be given to the individual rights and freedoms declared by this Charter, it is hereby further proclaimed that, in Canada, no law shall apply or have effect so as to abrogate, abridge or derogate from any such right or freedom.

Definition and enforcement of rights and freedoms where no other remedy available

24. Where no other remedy is available or provided for by law, any individual may, in accordance with the applicable procedure of any court in Canada of competent jurisdiction, request the court to define or enforce any of the individual rights and freedoms declared by this Charter, as they extend or apply to him or her, by means of a declaration of the court or by means of an injunction or similar relief, accordingly as the circumstances require.

**22. This new section stipulates that no new federal or provincial law shall apply so as to affect adversely the preservation of English or French as the language spoken or enjoyed by an identifiable minority group.**

**23-29. These sections are all new and provide guidance as to how the rights and freedoms declared by the Charter would apply.**

**23. No law shall derogate from the individual rights and freedoms assured by the Charter. (But also see s. 25.)**

**24. Where there is no other remedy, a person may ask a court to define or enforce an individual right or freedom. (See s. 27.)**

Justifiable limitations	<p>25. Nothing in this Charter shall be held to prevent such limitations on the exercise or enjoyment of any of the individual rights and freedoms declared by this Charter as are justifiable in a free and democratic society in the interests of public safety or health, the interests of the peace and security of the public, or the interests of the rights and freedoms of others, whether such limitations are imposed by law or by virtue of the construction or application of any law.</p>	<p>25. Some limitations on the exercise of individual rights and freedoms may remain justifiable (e.g. in the interest of public safety or health).</p>
Rights not declared by Charter, including those of native people under Royal Proclamation	<p>26. Nothing in this Charter shall be held to abrogate, abridge or derogate from any right or freedom not declared by it that may have existed in Canada at the commencement of this Act, including, without limiting the generality of the foregoing, any right or freedom that may have been acquired by any of the native peoples of Canada by virtue of the Royal Proclamation of October 7, 1763.</p>	<p>26. The Charter does not derogate from existing rights and freedoms, including those of native people under the October 7, 1763 Royal Proclamation.</p>
Identification of declared individual rights and freedoms	<p>27. For greater certainty for the purposes of this Charter, the individual rights and freedoms declared by this Charter are those assured by or by virtue of sections 6 to 10, 14, 16, 19 and 21.</p>	<p>27. Section 27 lists the sections that contain individual rights and freedoms (i.e. those that can be defined or enforced under s. 24).</p>
Application to territories and territorial institutions	<p>28. A reference in any of sections 10 to 22 to a province or to the legislative assembly or legislature of a province shall be construed as including a reference to the Yukon Territory or the Northwest Territories or to the Council or Commissioner in Council thereof, as the case may be.</p>	<p>28. This section makes it clear that the Charter may be extended to the Yukon Territory and Northwest Territories in the same manner as to provinces. (See also s. 131(5).)</p>
Legislative authority not extended	<p>29. Nothing in this Charter shall be held to confer any legislative authority on any competent body or authority in that behalf in Canada, except as expressly contemplated by this Charter.</p>	<p>29. The Charter would not extend the legislative authority of Parliament or the provincial legislatures.</p>
Initial application of Canadian Charter of Rights and Freedoms	<p>131. (1) Until such time as this subsection is repealed by subsection (4), the provisions of the <i>Canadian Charter of Rights and Freedoms</i> as enacted by this Act shall be read and construed as extending only to matters coming within the legislative authority of the Parliament of Canada, except as otherwise provided by the legislature of any province acting under the authority conferred on it by the Constitution of Canada.</p>	<p>131. This section provides for the constitutionalization and entrenchment of the <i>Canadian Charter of Rights and Freedoms</i> and for matters consequential thereto. (See the Introduction hereto, category 2.)</p> <p>(1) By virtue of subsection (1), the Charter would apply only to federal matters until such time as a province adopts it.</p>

Approval of  
additional  
measures to be  
taken when  
agreed

(2) In order that effect may be given as soon as may be to the extension of the Charter referred to in subsection (1) to matters coming within the legislative authority of the legislatures of all the provinces equally as to matters coming within the legislative authority of the Parliament of Canada, as part of the Constitution of Canada, it is hereby declared and directed that, on and after the commencement of this Act and by virtue of its enactment by the Parliament of Canada, both Houses of the Parliament of Canada shall be deemed to have approved of a resolution for the amendment of the Constitution of Canada in the form and to the effect of the Charter referred to in subsection (1), which resolution may be taken up and dealt with by action as on a joint address or by proclamation, as the case may be, as and when it may lawfully be so taken up and dealt with in accordance with the procedure for such amendment then recognized by accepted usage, if there is then no procedure for that purpose expressly provided for by the Constitution of Canada, or in accordance with the procedure for that purpose expressly so provided for, if there is then such a procedure.

Provisions  
applicable when  
Charter  
extended to  
matters within  
provincial  
legislative  
authority

(3) From and after such time as it is provided by the legislature of any province, acting within the authority conferred on it by the Constitution of Canada, that the provisions of the *Canadian Charter of Rights and Freedoms* as enacted by this Act extend to matters coming within its legislative authority,

(a) the provisions of the Act of 1867 respecting the reservation of assent to Bills, the disallowance of Acts and the signification of pleasure on Bills reserved, as those provisions extend and are made applicable to the legislatures of the several provinces by virtue of and in the manner provided in section 90 of the Act of 1867, shall cease to extend and be applicable to the legislature of that province as if they were herein repealed or made inapplicable in terms to that province and its legislature; and

(2) Subsection (2) would authorize the taking of the steps necessary to secure the entrenchment of the Charter.

(3) Where a province adopts the Charter, the federal government would cease to be able to disallow statutes of that province. Also, because, upon adoption of the Charter, Ontario would be required by s. 15(2) to publish its statutes in French, as well as English, for the first time, some flexibility would be given as to the commencement of this requirement.

(b) where that province is Ontario, subsection 15(2) of this Act shall not apply so as to require the printing and publishing in English and French of any statutes of, or any revision or consolidation of statutes authorized by, the legislature of that province except any such statutes enacted after, or any such revision or consolidation authorized to have effect after, such day or days as that legislature shall have fixed therefor.

Full application  
of Charter

(4) At such time as the resolution deemed by subsection (2) to have been approved by both Houses of the Parliament of Canada has been taken up and dealt with as provided in that subsection and any further action required by law to give effect thereto has been taken,

(a) subsection 1 of this section is repealed;  
(b) sections 20, 50, 55 to 57, 85 and 86 of the Act of 1867 are repealed;

(c) sections 55 to 57 of the Act of 1867 respecting the reservation of assent to Bills, the disallowance of Acts and the signification of pleasure on Bills reserved, as those sections extended and were applicable immediately before the commencement of this Act to the legislature of the several provinces by virtue of and in the manner provided in section 90 of the Act of 1867, cease to extend and apply thereto, and section 90 is repealed in so far as it relates to the matters provided for in this paragraph; and

(d) section 133 of the Act of 1867 and section 23 of the *Manitoba Act, 1870* are repealed.

Matters  
reserved for  
determination  
by territorial  
governments

(5) Notwithstanding anything in subsection (1), for the purposes of that subsection the legislative authority of the Parliament of Canada shall be deemed not to extend to the Yukon Territory or the Northwest Territories in relation to any matter provided for in sections 13 to 21 of the *Canadian Charter of Rights and Freedoms* that would not, if those territories were provinces of Canada, come within the legislative authority of Parliament, and in relation to any such matter the reference in subsection (1) to the legislature of any province acting under the authority conferred on it by the Constitution of Canada shall be read as extending to the Commissioner in Council of any territory of Canada acting within the authority which is hereby conferred on the Commissioner in Council by the Parliament of Canada.

(4) When the Charter is entrenched, it would apply throughout Canada and s. (1), which limits it to federal matters, would be repealed. Also provisions of the Act of 1867 that relate to matters covered by the Charter, to the disallowance of federal and provincial legislation and to certain specified language rights in Quebec and Manitoba would be repealed.

(5) Pursuant to this subsection, the Commissioner in Council of the Yukon Territory or Northwest Territories would be given the same rights as a provincial legislature with respect to the adoption of the Charter.

## REGINA PREMIERS' CONFERENCE (1978)

The communiqué from the Regina meeting states:

... Provinces agreed to advance, again, the 1976 consensus, which has not received an adequate response from the federal government. (page 4)

... Some Premiers noted that the proposed language guarantees [in the Constitutional Amendment Bill] go substantially beyond earlier proposals, and feel that practical difficulties may be encountered in their provinces, particularly in respect of provincial government services and courts. (page 6)

. . .

### 4. The Official Languages of Canada

Respect for our two official languages must be a fundamental element of constitutional reform. English and French should, therefore, be guaranteed by an appropriate, agreed upon constitutional means, such guarantees to be extended across the country in a true national context.

In addition to the rights set out in the Canadian Constitutional (Victoria) Charter of 1971, language guarantees should explicitly provide for the right to minority language education. This right should be included as part of the provincial responsibility for education, currently Section 93 of The British North America Act.

The provision of other services, both as to timing and extent, should be left to the government responsible for them.

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(Pages 6 and 7 from Ontario paper "A Restatement of Ontario's Views on Canada and the Constitution")

## LAMONTAGNE/MACGUIGAN REPORT (OCTOBER 1978)

### Recommendation 13.

English and French languages should be clearly mentioned in the statement of aims of the Federation as having equal status as the official languages of the Parliament and Government of Canada.

## CONSTITUTIONAL CONFERENCE (1978)

NOTE: The source of each extract is shown at the end in brackets.

### Conclusion

In conclusion, it is the belief of the Province of British Columbia that we need a Constitution that is flexible enough on the subject of language to meet the legitimate aspirations of all parts of Canada. These aspirations will vary from region to region and within regions over time. The historical and demographic differences throughout the country call for varied responses by government. This approach would lead to a more regionally sensitive type of policy-making in Canada and to a more localized approach in dealing with matters such as the development of minority language services.

The Province of British Columbia is of the view that, subject to extending the present language guarantees contained in section 133 of the *B.N.A. Act* to further federal government services and Quebec government services, no further language guarantees should be added to the Constitution at this time.

Broad constitutional language guarantees are not appropriate to all of Canada and could lead to a further aggravation of language differences. Instead, the answer must lie in step-by-step positive developments in each of the provinces of Canada as changing needs dictate. British Columbia's recent initiatives in giving parents a choice of either official language as the language of instruction in the education system is a good example of this approach. This approach to the language question, while less dramatic than grand constitutional guarantees, can be a creative, positive and practical response to the needs of the citizens of Canada and could lead to the development of a new spirit of tolerance and mutual understanding between the two major language communities within our country.

(Page 26 from "British Columbia's Constitutional Proposals," Paper No. 7 - Language Rights and the Constitution of Canada." For a more complete analysis see full text available from the CICS.)

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28. That the Constitution recognize English and French as the official languages of Canada.

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(Page 25 from Alberta's position paper "Harmony in Diversity: A New Federalism for Canada." For a more complete analysis see full text available from the CICS.)

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. . .

- ACCOMMODATE THE REASONABLE REQUIREMENTS OF FRENCH-SPEAKING CANADIANS TO ENSURE THAT THEIR LANGUAGE AND CULTURE WILL BE ABLE TO DEVELOP AND THRIVE. PREDOMINANTLY, BUT BY NO MEANS EXCLUSIVELY, THE FOCUS OF THIS DEVELOPMENT WILL BE IN THE PROVINCE OF QUEBEC.

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(Page 13 from Ontario paper "Opening Statement by the Honourable William G. Davis")

ONT.

. . .

I THINK THAT WE ARE ALL AGREED ON A COMMON OBJECTIVE. WE ARE COMMITTED TO THE PROTECTION, MAINTENANCE, AND THE DEVELOPMENT OF OUR OFFICIAL MINORITIES ACROSS CANADA AND IN EACH PROVINCE. WHAT, THEN, IS THE MOST EFFECTIVE METHOD OF DELIVERING THIS COMMITMENT?

FIRST, ONTARIO BELIEVES THAT THE CONSTITUTION SHOULD CONTAIN A CLEAR STATEMENT THAT ENGLISH AND FRENCH ARE THE OFFICIAL LANGUAGES OF CANADA.

SECOND, IT IS OUR VIEW THAT THE CONSTITUTION SHOULD PROVIDE FOR THE RIGHT OF CANADIANS TO USE ENGLISH OR FRENCH IN OUR NATIONAL INSTITUTIONS AND WITH REGARD TO FEDERAL SERVICES.

THIRD, BECAUSE OF DIVERSE DEMOGRAPHIC CONDITIONS, IT IS MY VIEW THAT, AT THE PROVINCIAL LEVEL, EACH GOVERNMENT SHOULD BE RESPONSIBLE FOR THE PROVISION OF SERVICES ACCORDING TO THE NEEDS OF ITS RESIDENTS.

. . .

MOREOVER, RECOGNIZING THAT EDUCATION IS THE ONLY SECURE FOUNDATION ON WHICH LANGUAGE AND CULTURE DEVELOP, IT IS OUR BELIEF THAT, AT THIS POINT, THE RIGHT TO MINORITY LANGUAGE EDUCATION SHOULD BE EXPLICITLY GUARANTEED IN A NEW CONSTITUTION.

. . .

. . .

WITH RESPECT TO THE FEDERAL PROPOSAL TO INCLUDE IN THE CONSTITUTION A CHARTER OF RIGHTS, I HAVE ONLY TO STATE MY BASIC AGREEMENT WITH THE PRINCIPLES. NEW BRUNSWICK HAS ALREADY GIVEN AN INDICATION OF ITS POSITION ON THESE MATTERS THROUGH SUCH LEGISLATION AS OUR OFFICIAL LANGUAGES ACT AND OUR HUMAN RIGHTS ACT. I WOULD ONLY HAVE THE CONCERN THAT THE INTENT OF THESE PROVISIONS BE MADE AS CLEAR AS POSSIBLE SO THAT, IN FACT, CERTAIN RIGHTS OF ALL CANADIANS ARE INDEED BETTER SECURED AND LESS SUBJECT TO CONTROVERSY AND ARBITRARY JUDGEMENT. I DO ACKNOWLEDGE, HOWEVER, THAT THE PROVISIONS SET FORTH ARE GENERALLY REPRESENTATIVE OF THE FEELINGS OF MOST CANADIANS AND WORTHY OF INCLUSION IN ANY REFORM OF THEIR CONSTITUTION.

. . .

(Page 8 from New Brunswick's paper "Statement by the Honourable Richard Hatfield on the Constitution")

## REGIONAL DISPARITIES



## V. REGIONAL DISPARITIES

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B.N.A. ACT

No reference

VICTORIA CHARTER (1971)

PART VII

REGIONAL DISPARITIES

Art. 46. The Parliament and Government of Canada and the Legislatures and Governments of the Provinces are committed to:

- (1) the promotion of equality of opportunity and well being for all individuals in Canada;
- (2) the assurance, as nearly as possible, that essential public services of reasonable quality are available to all individuals in Canada; and
- (3) the promotion of economic development to reduce disparities in the social and economic opportunities for all individuals in Canada wherever they may live.

Art. 47. The provisions of this Part shall not have the effect of altering the distribution of powers and shall not compel the Parliament of Canada or Legislatures of the Provinces to exercise their legislative powers.

## SPECIAL JOINT COMMITTEE ON THE CONSTITUTION (1972)

29. The equitable distribution of income should be recognized in the preamble of the Constitution as a dynamic and humane objective of our social policy. Consequently, we agree with the principle stated in the Victoria Charter that:

The Parliament and Government of Canada and the Legislatures and Governments of the Provinces are committed to . . . the promotion of equality of opportunity and well being for all individuals in Canada.

30. We agree with the statement in the Victoria Charter that:

The Parliament and Government of Canada and the Legislatures and Governments of the Provinces are committed to . . . the assurance, as nearly as possible, that essential public services of reasonable quality are available to all individuals in Canada.

This objective should be recognized in the preamble of the Constitution.

31. The preamble of the Constitution should provide that every Canadian should have access to adequate Federal, Provincial and municipal services without having to bear a disproportionate tax burden because of the region in which he lives. This recommendation follows logically from our acceptance of the principle of equality of opportunity for all Canadians.

32. We completely accept the following objective as stated in the Victoria Charter:

The promotion of economic development to reduce disparities in the social and economic opportunities for all individuals in Canada wherever they may live.

As in the case of redistribution of income among individuals and for the same reasons, this objective should be recognized in the preamble of the Constitution.

## DRAFT PROCLAMATION (1976)

### Part V

#### Regional Disparities

Art. 39 Without altering the distribution of powers and without compelling the Parliament of Canada or the Legislatures of the Provinces to exercise their legislative powers, the Parliament of Canada and the Legislatures of the Provinces, together with the Government of Canada and the Governments of the Provinces, are committed to:

- (a) the promotion of equality of opportunity and well-being for all individuals in Canada;
- (b) the assurance, as nearly as possible, that essential public services of reasonable quality are available to all individuals in Canada; and
- (c) the promotion of economic development to reduce disparities in the social and economic opportunities for all individuals in Canada wherever they may live.

## PREMIERS' CONFERENCES (1976)

Extract from letter of October 14, 1976 from the Premier of Alberta to the Prime Minister of Canada.

- f) Regional Disparities and Equalization - In the draft proclamation, Regional Disparities was referred to in Part V. The discussions on this topic focussed on the expansion and strengthening of this section to include a reference to equalization. There was unanimous agreement on the clause contained in the draft proclamation and a high degree of consensus on incorporating clauses in the Constitution providing for equalization.

## DRAFT RESOLUTION (1977)

### PART IV - REGIONAL DISPARITIES

- Art. 22      Without altering the distribution of powers and without compelling the Parliament of Canada or the Legislatures of the Provinces to exercise their legislative powers, the Parliament of Canada and the Legislatures of the Provinces, together with the Government of Canada and the Governments of the Provinces, are committed to:
- (a) the promotion of equality of opportunity and well-being for all individuals in Canada;

- (b) the assurance, as nearly as possible, that essential public services of reasonable quality are available to all individuals in Canada; and
- (c) the promotion of economic development to reduce disparities in the social and economic opportunities for all individuals in Canada wherever they may live.

#### BILL C-60 (1978)

Statement of  
aims of  
Canadian  
Federation

4. To these ends, the stated aims of the 35 Canadian federation shall be:

. . .

—to pursue social justice and economic opportunity for all Canadians through the equitable sharing of the benefits and burdens of living in the vast land that is their common inheritance, through the commitment of all Canadians to the balanced development of the land of their common inheritance and to the preservation of its richness and beauty in trust for themselves and generations to come, and through their commitment to overcome unacceptable disparities among Canadians in every region including disparities in the basic public services available to them;

## IX REGIONAL DISPARITIES

Commitment to promote equal opportunities, etc., for individuals in all regions of Canada

96. Without limiting or restricting the generality of the statement of aims of the Canadian federation set forth in section 4 of this Act and without altering the legislative authority of the Parliament of Canada or of the legislatures of the provinces or the rights of any of them with respect to the exercise of their legislative authority pursuant to law, the Parliament of Canada and the legislatures of the provinces, together with the government of Canada and the governments of the provinces, are committed pursuant to the Constitution of Canada to

(a) promoting equal opportunities for social and economic well-being.

(b) assuring as nearly as is practicable the availability of essential public services of reasonable quality, and

(c) furthering economic development to reduce disparities in opportunities for social and economic well-being and in the availability of essential public services of reasonable quality

for the benefit of all individuals in Canada, wherever they may live.

Commitments by Parliament to be capable of being made constitutionally binding on Canada

\*99. Where authority is conferred or provided by any Act of the Parliament of Canada for the payment, otherwise than pursuant to an agreement or other arrangement having the force of a binding contractual obligation, of any public money of Canada to or to the use of any institution of government of any province or territory of Canada subject to such terms and conditions, if any, as may be contained in or provided for by that Act, the authority for such payment, if expressly stated in that Act to create an obligation on Canada to which this section shall apply, shall, for the period of the subsistence of the authority and subject to those terms and conditions, if any, constitute an obligation accordingly by which Canada shall be bound and to which Canada shall be committed pursuant to the Constitution of Canada, and it shall not be competent for the Parliament of Canada to terminate or alter any such obligation except as one by which Canada is so bound and to which it is so committed.

96. This provision expresses a new commitment to promote equal opportunities for social and economic well-being, assure essential public services and promote the reduction of disparities in all regions of Canada. It would have effect federally on the commencement of the Bill. It would come into effect in a province on adoption by the province and be entrenched in a manner similar to the Charter. (See s. 132 and the Introduction hereto, category 2.)

99. New. Certain commitments by Parliament for the payment of money to provinces may be made constitutionally binding and not capable of being abrogated by Parliament.

## REGINA PREMIERS' CONFERENCE (1978)

The Premiers agreed to advance, again, the 1976 consensus, referring to the particular consensus therein regarding regional disparities and equalization.  
(Communiqué)

. . .

Economic union also means equality of economic opportunity. The Constitution, therefore, should state a clear commitment to the enlargement of regional economic opportunities as a goal of Confederation and as a test of national policies.

. . .

(Page 7 from Ontario paper "A Restatement of Ontario's Views on Canada and the Constitution")

## LAMONTAGNE/MACGUIGAN REPORT (OCTOBER 1978)

No proposal

## CONSTITUTIONAL CONFERENCE (1978)

NOTE: The source of each extract is shown at the end in brackets.

. . .

26. That the objective of reducing regional disparities be recognized in the Constitution.
27. That the principle of equalization be recognized in the Constitution.

. . .

(Page 25 from Alberta's position paper "Harmony in Diversity: A New Federalism for Canada." For a more complete analysis see full text available from the CICS.)

- 
- . . .
- REDUCE THE FRUSTRATIONS CAUSED BY UNEQUAL ECONOMIC OPPORTUNITIES ACROSS THE COUNTRY. CANADA CANNOT AFFORD THE CONTINUATION OF SHARP DISPARITIES AND A BETTER DISTRIBUTION OF ECONOMIC ACTIVITY IS, THEREFORE, A PRIORITY. EACH OF US SHOULD BE WILLING TO SHARE A FAIR PROPORTION OF THE BENEFITS WHICH ACCRUE FROM FAVOURABLE NATIONAL POLICIES OR FROM THE GOOD FORTUNE OF NATURAL ENDOWMENTS.
- . . .

(Page 13 from Ontario paper "Opening Statement by the Honourable William G. Davis")

---

. . .

IT IS A PRINCIPLE OF CONFEDERATION THAT THE "HAVE NOT" REGIONS ARE HELPED BY THE "HAVE" PARTS OF OUR NATION. WHAT WE MUST CONSIDER IS HOW THIS PRINCIPLE CAN BEST BE REFLECTED IN OUR CONSTITUTION. ONE OBVIOUS WAY IS TO PROVIDE IN THE CONSTITUTION A REQUIREMENT THAT THE FEDERAL GOVERNMENT, THROUGH PARLIAMENT, MAKE EQUALIZATION GRANTS TO THOSE PROVINCES WHOSE ECONOMIES FALL BELOW A CERTAIN NATIONAL STANDARD.

IT SHOULD ALSO BE RECOGNIZED THAT JUST AS BOTH ORDERS OF GOVERNMENT MUST WORK TOGETHER TO DEVELOP NATIONAL ECONOMIC POLICIES, THE SAME SPIRIT OF COOPERATION MUST EXIST TO DEVELOP REGIONAL ECONOMIC POLICIES. IF IN THE FIRST CASE, IT IS FEDERAL LEADERSHIP THAT WE SHOULD LOOK TO, IN THE SECOND, IT IS THE PROVINCES THAT SHOULD UNDERTAKE THE LEAD ROLE.

. . .

(Pages 16 and 17 from Ontario paper "Distribution of Powers")

. . .

ONE OF THE BASIC PRINCIPLES OF OUR CONFEDERATION HAS BEEN THE REDISTRIBUTION OF WEALTH FROM THE MORE ADVANTAGED AREAS OF THE COUNTRY TO THE LESS ADVANTAGED. THIS PRINCIPLE WHICH MAKES CANADA UNIQUE AMONG WORLD'S FEDERATIONS HAS BEEN REALIZED THROUGH EQUALIZATION, WHICH HAS CONTRIBUTED IMMEASUREABLY TO THE ORDERLY DEVELOPMENT AND STABILITY OF OUR COUNTRY.

THE DETERMINATION TO SHARE THE BENEFITS OF OUR COUNTRY THROUGH THE PRINCIPLE OF EQUALIZATION MUST BE ENTRENCHED IN OUR NEW CONSTITUTION.

. . .

(Page 8 from New Brunswick's paper "Statement by the Honourable Richard Hatfield on the Constitution")

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REGIONAL DISPARITIES:

We believe that the commitment to equalization stands apart from any other program as a pillar of Confederation. The principle of equalization is completely fundamental to our concept of Confederation. If the citizens of Canada are to enjoy a reasonable standard of essential services without an abnormal burden of taxation we must continue equalization transfers between governments.

(Page 5 from Nova Scotia paper "Address by the Honourable John M. Buchanan, Q.C.")

---

. . .

If nationhood means anything, Canadians must have equal access to opportunities and enjoy national standards for basic services regardless of the rising or falling of the fortunes of individual provinces. This should be the common birthright of all Canadians and a fundamental principle of the country.

. . .

(Page 8 from Prince Edward Island's paper "Statement by the Honourable W. Bennett Campbell")



## EXECUTIVE POWER



## VI. EXECUTIVE POWER

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## B.N.A. ACT

### III.—EXECUTIVE POWER.

**9.** The Executive Government and Authority of and over Canada is hereby declared to continue and be vested in the Queen. Declaration of Executive Power in the Queen.

**10.** The Provisions of this Act referring to the Governor General extend and apply to the Governor General for the Time being of Canada, or other the Chief Executive Officer or Administrator for the Time being carrying on the Government of Canada on behalf and in the Name of the Queen, by whatever Title he is designated. Application of Provisions referring to Governor General.

**11.** There shall be a Council to aid and advise in the Government of Canada, to be styled the Queen's Privy Council for Canada; and the Persons who are to be Members of that Council shall be from Time to Time chosen and summoned by the Governor General and sworn in as Privy Councillors, and Members thereof may be from Time to Time removed by the Governor General. Constitution of Privy Council for Canada.

All Powers under Acts to be exercised by Governor General with Advice of Privy Council, or alone.

**12.** All Powers, Authorities, and Functions which under any Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of Upper Canada, Lower Canada, Canada, Nova Scotia, or New Brunswick, are at the Union vested in or exercisable by the respective Governors or Lieutenant Governors of those Provinces, with the Advice, or with the Advice and Consent, of the respective Executive Councils thereof, or in conjunction with those Councils, or with any Number of Members thereof, or by those Governors or Lieutenant Governors individually, shall, as far as the same continue in existence and capable of being exercised after the Union in relation to the Government of Canada, be vested in and exercisable by the Governor General, with the Advice or with the Advice and Consent of or in conjunction with the Queen's Privy Council for Canada, or any Member thereof, or by the Governor General individually, as the Case requires, subject nevertheless (except with respect to such as exist under Acts of the Parliament of Great Britain or of the Parliament of the United Kingdom of Great Britain and Ireland) to be abolished or altered by the Parliament of Canada. (6)

Application of Provisions referring to Governor General in Council.

**13.** The Provisions of this Act referring to the Governor General in Council shall be construed as referring to the Governor General acting by and with the Advice of the Queen's Privy Council for Canada.

Power to Her Majesty to authorize Governor General to appoint Deputies.

14. It shall be lawful for the Queen, if Her Majesty thinks fit, to authorize the Governor General from Time to Time to appoint any Person or any Persons jointly or severally to be his Deputy or Deputies within any Part or Parts of Canada, and in that Capacity to exercise during the Pleasure of the Governor General such of the Powers, Authorities, and Functions of the Governor General as the Governor General deems it necessary or expedient to assign to him or them, subject to any Limitations or Directions expressed or given by the Queen; but the Appointment of such a Deputy or Deputies shall not affect the Exercise by the Governor General himself of any Power, Authority or Function.

Command of armed Forces to continue to be vested in the Queen.

15. The Command-in-Chief of the Land and Naval Militia, and of all Naval and Military Forces, of and in Canada, is hereby declared to continue and be vested in the Queen.

## GOVERNOR GENERAL'S LETTERS PATENT (1947)

"GEORGE R."

### CANADA

GEORGE THE SIXTH, by the Grace of God, of Great Britain, Ireland and the British Dominions beyond the Seas KING, Defender of the Faith.

[SEAL]

To all to whom these Presents shall come,

### GREETING:

Whereas by certain Letters Patent under the Great Seal bearing date at Westminster the Twenty-third day of March, 1931, His late Majesty King George the Fifth did constitute, order, and declare that there should be a Governor General and Commander-in-Chief in and over Canada, and that the person filling the office of Governor General and Commander-in-Chief should be from time to time appointed by Commission under the Royal Sign Manual and Signet:

Preamble.

Recites  
Letters  
Patent of  
23rd March,  
1931.

And whereas at St. James, on the Twenty-third day of March, 1931, His late Majesty King George the Fifth did cause certain Instructions under the Royal Sign Manual and Signet to be given to the Governor General and Commander-in-Chief:

And whereas it is Our Will and pleasure to revoke the Letters Patent and Instructions and to substitute other provisions in place thereof:

Now therefore we do by these presents revoke and determine the said Letters Patent, and everything therein contained, and all amendments thereto, and the said Instructions, but without prejudice to anything lawfully done thereunder:

Revokes  
Letters  
Patent of  
23rd March,  
1931, and  
Instruc-  
tions.

And we do declare Our Will and pleasure as follows:

I. We do hereby constitute, order, and declare that there shall be a Governor General and Commander-in-Chief in and over Canada, and appointments to the Office of Governor General and Commander-in-Chief in and over Canada shall be made by Commission under Our Great Seal of Canada.

Office of  
Governor  
General and  
Commander-  
in-Chief  
constituted.

His powers  
and  
authorities.

II. And We do hereby authorize and empower Our Governor General, with the advice of Our Privy Council for Canada or of any members thereof or individually, as the case requires, to exercise all powers and authorities lawfully belonging to Us in respect of Canada, and for greater certainty but not so as to restrict the generality of the foregoing to do and execute, in the manner aforesaid, all things that may belong to his office and to the trust We have reposed in him according to the several powers and authorities granted or appointed him by virtue of The British North America Acts, 1867 to 1946 and the powers and authorities hereinafter conferred in these Letters Patent and in such Commission as may be issued to him under Our Great Seal of Canada and under such laws as are or may hereinafter be in force in Canada.

Great Seal.

III. And We do hereby authorize and empower Our Governor General to keep and use Our Great Seal of Canada for sealing all things whatsoever that may be passed under Our Great Seal of Canada.

Appoint-  
ment of  
Judges,  
Justices, etc.

IV. And We do further authorize and empower Our Governor General to constitute and appoint, in Our name and on Our behalf, all such Judges, Commissioners, Justices of the Peace, and other necessary Officers (including diplomatic and consular officers) and Ministers of Canada, as may be lawfully constituted or appointed by Us.

Suspension  
or removal  
from Office.

V. And We do further authorize and empower Our Governor General, so far as We lawfully may, upon sufficient cause to him appearing, to remove from his office, or to suspend from the exercise of the same, any person exercising any office within Canada, under or by virtue of any Commission or Warrant granted, or which may be granted, by Us in Our name or under Our authority.

Summoning,  
proroguing,  
or dissolv-  
ing the  
Parliament  
of Canada.

VI. And We do further authorize and empower Our Governor General to exercise all powers lawfully belonging to Us in respect of summoning, proroguing or dissolving the Parliament of Canada.

Power to  
appoint  
Deputies.

VII. And whereas by The British North America Acts, 1867 to 1946, it is amongst other things enacted that it shall be lawful for Us, if We think fit, to authorize Our Governor General to appoint any person or persons, jointly or severally, to be his Deputy or Deputies within any part or parts of Canada, and in that capacity to exercise, during the pleasure of Our Governor General, such of the powers, authorities, and functions of Our Governor General as he may deem it necessary or expedient to assign to such Deputy or Deputies, subject to any limitations or directions from time to time expressed or given by Us: Now We do hereby authorize and empower Our Governor General, subject to such limitations and directions, to appoint any person or persons, jointly or severally, to be his Deputy or Deputies within any part or parts of Canada, and in that capacity to exercise, during his pleasure, such of his powers, functions, and authorities as he may deem it necessary or expedient to assign to him or them: Provided always, that the appointment of such a Deputy or Deputies shall not affect the exercise of any such power, authority or function by Our Governor General in person.

Succession.

VIII. And We do hereby declare Our pleasure to be that, in the event of the death, incapacity, removal, or absence of Our Governor General out of Canada, all and every, the powers and authorities herein granted to him shall until Our further pleasure is signified therein, be vested in Our Chief Justice for the time being of Canada (hereinafter called Our Chief Justice) or, in the case of the death, incapacity, removal or absence out of Canada of Our Chief Justice, then in the Senior Judge for the time being of the Supreme Court of Canada, then residing in Canada and not being under incapacity; such Chief Justice or Senior Judge of the Supreme Court of Canada, while the said powers and authorities are vested in him to be known as Our Administrator.

Provided always, that the said Senior Judge shall act in the administration of the Government only if and when Our Chief Justice shall not be present within Canada and capable of administering the Government.

Provided further that no such powers or authorities shall vest in such Chief Justice, or other judge of the Supreme Court of Canada, until he shall have taken the Oaths appointed to be taken by Our Governor General.

Proviso.

Administrator to take oaths of office before administering the Government.

Provided further that whenever and so often as Our Governor General shall be temporarily absent from Canada, with Our permission, for a period not exceeding one month, then and in every such case Our Governor General may continue to exercise all and every the powers vested in him as fully as if he were residing within Canada, including the power to appoint a Deputy or Deputies as provided in the Eighth Clause of these Our Letters Patent.

IX. And We do hereby require and command all Our Officers and Ministers, Civil and Military, and all the other inhabitants of Canada, to be obedient, aiding, and assisting unto Our Governor General, or, in the event of his death, incapacity, or absence, to such person as may, from time to time, under the provisions of these Our Letters Patent administer the Government of Canada.

Officers and others to obey and assist the Governor General.

Publication of Governor General's Commission.

X. And We hereby declare Our Pleasure to be that Our Governor General for the time being shall with all due solemnity, cause Our Commission under Our Great Seal of Canada, appointing Our Governor General for the time being, to be read and published in the presence of Our Chief Justice, or other Judge of the Supreme Court of Canada, and of members of Our Privy Council for Canada, and that Our Governor General shall take the Oath of Allegiance in the form following:

Oaths to be taken by Governor General, etc.

"I, ..... do swear that I will be faithful and bear true allegiance to His Majesty King George the Sixth, His Heirs and successors, according to law. So Help me God"; and likewise he shall take the usual oath for the due execution of the Office of Our Governor General and Commander-in-Chief in and over Canada, and for the due and impartial administration of justice; which Oaths Our Chief Justice, or, in his absence, or in the event of his being otherwise incapacitated, any Judge of the Supreme Court of Canada shall, and he is hereby required to, tender and administer unto him.

Oaths to be administered by the Governor General.

XI. And We do authorize and require Our Governor General from time to time, by himself or by any other person to be authorized by him in that behalf, to administer to all and to every person or persons, as he shall think fit, who shall hold any office or place of trust or profit in Canada, that said Oath of Allegiance, together with such other Oath or Oaths as may from time to time be prescribed by any Laws or Statutes in that behalf made and provided.

Grant of  
Pardons.

XII. And We do further authorize and empower Our Governor General, as he shall see occasion, in Our name and on Our behalf, when any crime or offence against the laws of Canada has been committed for which the offender may be tried thereunder, to grant a pardon to any accomplice, in such crime or offence, who shall give such information as shall lead to the conviction of the principal offender, or of any one of such offenders if more than one; and further to grant to any offender convicted of any such crime or offence in any court, or before any Judge, Justice, or Magistrate, administering the laws of Canada, a pardon, either free or subject to lawful conditions, or any respite of the execution of the sentence of any such offender, for such period as to Our Governor General may seem fit, and to remit any fines, penalties, or forfeitures which may become due and payable to Us. And We do hereby direct and enjoin that Our Governor General shall not pardon or relieve any such offender without first receiving in capital cases the advice of Our Privy Council for Canada and, in other cases, the advice of one at least, of his Ministers.

Power to  
issue  
Exequaturs.

XIII. And We do further authorize and empower Our Governor General to issue Exequaturs, in Our name and on Our behalf, to Consular Officers of foreign countries to whom Commissions of Appointment have been issued by the Heads of States of such countries.

XIV. And whereas great prejudice may happen to Our Service and to the security of Canada by the absence of Our Governor General, he shall not quit Canada without having first obtained leave from Us for so doing through the Prime Minister of Canada.

Governor  
General's  
absence.

XV. And We do hereby reserve to Ourselves, Our heirs and successors, full power and authority from time to time to revoke, alter, or amend these Our Letters Patent as to Us or them shall seem meet.

Power  
reserved to  
His Majesty  
to revoke,  
alter or  
amend the  
present  
Letters  
Patent.

XVI. And We do further direct and enjoin that these Our Letters Patent shall be read and proclaimed at such place or places within Canada as Our Governor General shall think fit.

Publication  
of Letters  
Patent.

XVII. And We do further declare that these Our Letters Patent shall take effect on the first day of October, 1947.

Coming into  
effect of  
Letters  
Patent.

IN WITNESS WHEREOF We have caused these Our Letters to be made Patent, and for the greater testimony and validity thereof, We have caused Our Great Seal of Canada to be affixed to these presents, which We have signed with Our Royal Hand.

GIVEN the eighth day of September in the Year of Our Lord One Thousand Nine Hundred and Forty-Seven and in the Eleventh Year of Our Reign.

BY HIS MAJESTY'S COMMAND.

"W. L. MACKENZIE KING",  
*Prime Minister of Canada.*

VICTORIA CHARTER (1971)

No reference

SPECIAL JOINT COMMITTEE ON THE CONSTITUTION (1972)

33. Because of the state of divided opinion in Canada, the Committee does not recommend any change in the monarchical system at the present time.
34. The Committee itself prefers a Canadian as Head of State, and supports the evolutionary process by which the Governor General has been granted more functions are the Head of State for Canada. Eventually, the question of retaining or abolishing the Monarchy will have to be decided by way of clear consultation with the Canadian people.

DRAFT PROCLAMATION (1976)

No reference

PREMIERS' CONFERENCES (1976)

No reference

DRAFT RESOLUTION (1977)

No reference

## BILL C-60 (1978)

### IV ELEMENTS AND COMPOSITION OF THE CANADIAN FEDERATION

The Queen of  
Canada

30. The sovereign head of Canada is Her Majesty the Queen, who shall be styled the Queen of Canada and whose sovereignty as such shall pass to her heirs and successors in accordance with law.

30-36. These sections describe the elements that make up the Canadian federation. They also deal with territorial limits, law enforcement and Canadian symbols and declare the Constitution to be the supreme law of Canada. The provisions marked with asterisks are designated sections and would come into effect only when entrenched. (See s. 125 and the Introduction hereto, category 4.)

30. New. The Queen would continue to be the sovereign head of Canada with the title Queen of Canada. The royal style and titles for Canada would be changed by s. 30 and an amendment in Schedule A to *An Act respecting the Royal Style and Titles* that would delete the reference to the Sovereign as Queen "of the United Kingdom".

Constitution of  
Canada to  
govern as  
supreme law of  
Canadian  
federation

\*35. The Constitution of Canada shall be the supreme law of the Canadian federation, and all of the institutions of the Canadian federation shall be governed by it and by the conventions, customs and usages hallowed by it, as shall all of the people of Canada.

35. This new section states the basic constitutional principle that the Constitution is the supreme law of Canada.

### VI THE FEDERAL AUTHORITY IN AND FOR CANADA

#### *(a) The Governor General of Canada*

Office of  
Governor  
General of  
Canada

42. There shall be an officer for Canada styled the Governor General of Canada, who shall be appointed by the Queen by letters patent under the Great Seal of Canada on the advice of the Council of State of Canada, and who shall represent the Queen in Canada and exercise for her the prerogatives, functions and authority belonging to her in respect of Canada by the Constitution of Canada or otherwise pursuant to law.

42-48. These sections relate to the office of Governor General of Canada. In 1867 the Governor General represented the Queen and the imperial government. In 1931, when Canada became an independent country, he became, with the same title, simply the Sovereign's representative. Gradually he has come to exercise more powers of the Sovereign until now he exercises virtually all of them.

Executive  
government  
vested in  
Governor  
General

43. The executive government of and over Canada shall be vested in the Governor General of Canada, on behalf and in the name of the Queen.

The office of Governor General was not constituted by the Act of 1867 but by separate Letters Patent which were re-issued in 1947 to reflect the development of the office. The Bill would transform the office of Governor General from one established by prerogative document to a statutory office, incorporate the principal provisions of the Letters Patent into the statute and provide for the Governor General to continue his role in Parliament in his own rather than in the Queen's name. (See s. 56.) The Sovereign's authority, while she is in Canada, would be retained. Sections 42 to 48, together with the other sections relating to federal institutions, would have effect as soon as the Bill becomes law. (See s. 124 and the Introduction hereto, category 1(1).)

In effect, the result would be to retain the monarchy for Canada and to constitute, at the same time, a Governor General with full status and powers in his or her own right rather than merely in the capacity of a representative of the Sovereign.

Precedence, and  
relationship to  
other offices

44. The Governor General of Canada shall have precedence as the First Canadian, and the office of the Governor General shall stand above and apart from any other public office in Canada.

42. This section is new and would embody the office of Governor General in the Constitution. It derives from Articles I and II of the present Letters Patent.

Tenure of office  
of Governor  
General

45. (1) The tenure of office of the Governor General of Canada shall be at the pleasure of the Queen, expressed by her on the advice of the Council of State of Canada, but unless so expressed the Governor General shall hold office for a period of five years from the time of his or her appointment, subject to his or her re-appointment to such office for a further period not exceeding three years.

43. This section would modify the present s. 9 to reflect the reality that the executive government is not carried on by the Sovereign but is carried on by the Governor General who acts in the Sovereign's name but on his or her own constitutional authority. (See also s. 48(2).)

44. This section is new and would emphasize the importance of the office.

45. This section is new but would reflect the present practice of five-year appointments and the practice of appointing a Canadian to the office.

Appointments  
to office of  
Governor  
General

(2) Appointments to the office of Governor General of Canada shall be made from among those citizens of Canada having the stature in Canada adjudged to be suitable to that office.

For existing salary provisions, see the present s. 105 and s. 4 of the *Governor General's Act*.

Salary, etc. of  
Governor  
General

(3) The salary, allowances and pension of the Governor General of Canada shall be fixed and provided by the Parliament of Canada.

Powers,  
authorities and  
functions

46. All powers, authorities and functions vested in and exercisable by the Governor General of Canada, with the advice or with the advice and consent of or in conjunction with the Queen's Privy Council for Canada, or any member thereof, or by the Governor General individually, as the case may be, immediately before the commencement of this Act, continue to be vested in and exercisable by the Governor General, on the advice of or by and with the advice of the Council of State of Canada, or any member thereof, or by the Governor General individually, as the case requires, subject to this Act and subject to be abolished or altered by the Parliament of Canada or otherwise under the authority of the Constitution of Canada.

Command of  
Forces

47. The command-in-chief of the Canadian Forces is hereby declared to be vested in the Governor General of Canada.

Appointment of  
deputies

48. (1) The Governor General of Canada is authorized and empowered to appoint from time to time any person or persons, jointly or severally, to be his or her deputy or deputies within any part or parts of Canada, and in that capacity to exercise during the pleasure of the Governor General such of the powers, authorities and functions of the Governor General as the Governor General deems it necessary or expedient to assign to such deputy or deputies, but the appointment of such a deputy or deputies shall not affect the exercise by the Governor General personally of any such power, authority or function.

Construction of  
provisions  
respecting  
Governor  
General;  
additional  
provisions  
respecting  
office, etc., of  
Governor  
General and for  
appointment of  
Administrator

(2) For greater certainty, nothing in this Act respecting the Governor General of Canada or the office of Governor General shall be construed as precluding the Queen, on the advice of the Council of State of Canada, from exercising while in Canada

46. This section would continue in the Governor General the powers at present exercised by the Governor General. It is new but derives from the present s. 12 which is an equivalent transitional provision.

47. The military authority of the Governor General derives from the present s. 15 and Article I of the present Letters Patent.

48. (1) The power to appoint deputies derives from the present s. 14 and Article VII of the present Letters Patent.

(2) This subsection would supplement s. 43 to preserve the powers of the Sovereign while in Canada (e.g. to open Parliament). It would also provide a statutory basis for the issuance of new Letters Patent relating to the office of Governor General to cover matters included in the present

any of the powers, authorities or functions of the Governor General under this Act; and it shall be lawful for the Queen, by letters patent under the Great Seal of Canada on the advice of the Council of State of Canada, to make such further provision, not inconsistent with this Act, respecting the office of or the powers, authorities or functions of the Governor General in relation to any matter or matters not expressly provided for by this Act as the Queen, on such advice, deems desirable, including provision for the appointment of and respecting the office of an Administrator to carry on the executive government of and over Canada during the absence or incapacity of the Governor General or during the period while any vacancy in the office of Governor General remains unfilled.

Application of provisions referring to Governor General

(3) The provisions of this Act referring to the Governor General of Canada extend and apply to the Administrator for the time being carrying on the executive government of and over Canada, by whatever title that person may be designated.

*(b) Executive Authority*

(i) The Council of State of Canada

Constitution of Council of State of Canada

49. (1) There shall be a council to be styled the Council of State of Canada, in whose name aid and advice in the government of Canada shall be given, and the persons who are to be members of that Council shall be chosen and summoned from time to time by the Governor General of Canada and sworn in as Councillors of State, and members thereof may be removed from time to time by the Governor General.

Membership to include members of the administration

(2) Without limiting the generality of subsection (1), the persons chosen and summoned from time to time to be members of the Council of State of Canada and to be sworn in as Councillors of State shall include, if they are not already members thereof, the person holding the recognized office of Prime Minister of Canada and each other person who on the advice of the Prime Minister is to be chosen and summoned by the Governor General of Canada to be appointed as or to be a Minister of the Crown, and to be a member of the administration for the time being of Canada.

Letters Patent but not in the Bill (e.g. the appointment of an Administrator). (See the present Letters Patent, especially Article VIII.)

(3) Subsection (3) is the present s. 10 modified.

49-50. These sections would change the name of the Queen's Privy Council for Canada to the Council of State of Canada. They state the function of the Council more clearly and amplify the substance of the present ss. 11 and 13 to reflect the present practice of appointing the Prime Minister and other Ministers to the Council.

49. This section provides for the Council, its function and the appointment of its members. Section 49(1) is the present s. 11 modified as indicated above. Section 49(2) is new but reflects the present practice described above.

References to  
Governor  
General in  
Council

50. The provisions of this Act referring to the Governor General in Council shall be construed as referring to the Governor General of Canada acting by and with the advice of the Council of State of Canada.

(ii) The Cabinet

Constitution of  
the Cabinet

51. There shall be a committee of the Council of State of Canada known as the Cabinet, consisting of the person holding the recognized office of Prime Minister of Canada and such other members of the Council of State as are Ministers of the Crown and members of the administration for the time being of Canada.

Powers and  
functions of  
Cabinet as  
committee of  
Council of  
State

52. The Cabinet as a committee of the Council of State of Canada may act for, and may exercise and perform the powers, duties and functions of, the Council of State, other than on and for occasions of ceremony of state when all of the members of the Council of State are summoned together by the Governor General of Canada.

Relationship of  
Cabinet to  
House of  
Commons of  
Canada

53. (1) The Cabinet has the management and direction of the government of Canada and is responsible to the House of Commons of Canada for its management and direction thereof.

Advice to be  
tendered

(2) In the event that the Cabinet is unable to command the confidence of the House of Commons in its management and direction of the government of Canada, the Prime Minister shall forthwith so inform the Governor General of Canada and as soon as possible thereafter tender to the Governor General his or her advice on

(a) whether Parliament should on that account be dissolved to permit the holding of a general election of members of the House of Commons, or

(b) if the dissolution of Parliament on that account is not advised by the Prime Minister or is refused by the Governor General, whether the Prime Minister should be invited to form another administration, or whether the resignation of the Prime Minister and of the other members of the Cabinet should be accepted to permit some person other than himself or herself to be called upon by the Governor General to form the administration for the time being of Canada.

50. This section is, in substance, the present s. 13.

51-54. These sections would incorporate into the written Constitution for the first time the basic principle of parliamentary government that there is a Cabinet headed by a Prime Minister and that the Cabinet is responsible to the House of Commons. While the provisions are new, they describe the present system of Cabinet composition, functions and responsibility.

51. The Cabinet is a committee of the Council of State composed of the Prime Minister and the other Ministers.

52. The Cabinet performs the functions of the Council of State except on certain formal occasions.

53. The Cabinet carries out the executive function of government and is responsible to the House of Commons. If it cannot command the confidence of the House, the Prime Minister must advise the Governor General to dissolve Parliament and call an election or to invite him or her (the then Prime Minister) or another person (e.g. the leader of the Opposition) to form a new government. Decisions as to the confidence of the House are decided by vote of the House.

Confidence to  
be decided by  
House

(3) In the event of any dispute arising as to whether the Cabinet commands or is unable to command the confidence of the House of Commons in its management and direction of the government of Canada, the matter shall be decided by the House of Commons, whose decision thereon shall be conclusive.

Qualifications,  
tenure and  
eligibility

54. The qualifications of persons to be members of the Cabinet and their continuation as such members shall, subject to this Act and except as otherwise regulated by law, be governed by accepted usage, except that no person is eligible to be a member of the Cabinet unless he or she is a member of one of the Houses of the Parliament of Canada or is qualified to be a candidate for election to the House of Commons of Canada.

Designated  
provisions:  
approval of  
additional  
measures to be  
taken when  
agreed

125. The enactment of this Act by the Parliament of Canada does not extend to any following provision (in this Part referred to as a "designated provision") set out in Part I of this Act, namely:

- (a) section 31,
- (b) section 33,
- (c) sections 35 to 40,
- (d) sections 79 to 95,
- (e) sections 97 to 99,
- (f) section 120, and
- (g) sections 121 to 123;

and the inclusion in this Act of any designated provision does not constitute an assertion by the Parliament of Canada of authority to enact any such provision; but in order that effect may be given as soon as may be to each such designated provision as part of the Constitution of Canada, it is hereby declared and directed that, on and after the commencement of this Act and by virtue of its enactment by the Parliament of Canada, both Houses of the Parliament of Canada shall be deemed to have approved of resolutions for the amendment of the Constitution of Canada in the form and to the effect of each of those provisions, each of which resolutions may be taken up and dealt with, either severally or in combination with any other or others of them, by action as on a joint address or by proclamation, as the case may be, as and when it or they may lawfully be so taken up and dealt with in accordance with the procedure for such amendment then recognized by accepted usage, if there is then no procedure for that purpose expressly provided for by the Constitution of Canada, or in accordance with the procedure for that purpose expressly so provided for, if there is then such a procedure.

54. A Cabinet member must be qualified to be a member of one of the Houses of Parliament.

125. This section provides for the coming into effect of the designated provisions. (See the Introduction hereto, categories 4 and 5.)

Amendment of  
designated  
provisions not  
precluded

126. Nothing in section 125 shall be construed as precluding the amendment of any designated provision, including, but without limiting the generality of that expression, any designated provision set out in sections 91 to 95, before such time as any resolution with respect thereto that is deemed by section 125 to have been approved by both Houses of the Parliament of Canada is taken up and dealt with as provided in that section.

126. This section emphasizes the possibility of amendment to any designated section before it is entrenched pursuant to s. 125.

Conflicts or  
inconsistencies

127. In the event of a conflict or inconsistency between

(a) the provisions of Part I other than any designated provisions set out therein, or

(b) after such time as effect has been given by law to any designated provision set out in Part I, the provisions of Part I to which effect has been given,

and the provisions of the Act of 1867 or any subsequent constitutional enactment, the provisions of Part I described in paragraph (a) or (b), as the case may be, shall prevail to the extent of such conflict or inconsistency.

127. This section provides a conflicts rule applicable in cases of conflict between Part I and the present legislation. To the extent Part I is in effect, it would prevail.

## REGINA PREMIERS' CONFERENCE (1978)

Provinces agree that the system of democratic parliamentary government requires an ultimate authority to ensure its responsible nature and to safeguard against abuses of power. That ultimate power must not be an instrument of the federal Cabinet. The Premiers, therefore, oppose constitutional changes that substitute for the Queen as ultimate authority, a Governor General whose appointment and dismissal would be solely at the pleasure of the federal Cabinet. (Extract from Communiqué)

# 1. The Maintenance of Responsible Government

Canada should continue to have federal and provincial governments which are democratic and parliamentary. Executive authority must be vested in the Crown while being democratically exercised by elected ministers retaining the confidence of a majority of the legislature. Parliament is composed of the monarch and the legislature. The traditional and substantive role of the monarchy is essential to the functioning of responsible government, and thus all these elements should be fully retained.

The monarchy is an essential element of Canada's system of parliamentary, responsible government. Because it is a system where powers are not separated and where, in contrast to the United States, there are no formal checks and balances between the executive, legislative and judicial branches of government, it requires an ultimate authority to ensure its responsible nature - even though this authority rarely needs to be used. This ultimate authority is provided by the monarch, and thus in no way, shape or form should its place and role be diminished nor should the head of state be appointed by the government of the day.

(Pages 4 and 5 from Ontario paper "A Restatement of Ontario's Views on Canada and the Constitution")

## LETTER TO THE PREMIER OF SASKATCHEWAN FROM THE PRIME MINISTER OF CANADA DATED SEPTEMBER 13, 1978 - EXTRACT

Both your letter and the communiqué refer to the federal proposals in respect of the Crown and the Governor General. There has here been a serious misunderstanding of the nature of the proposals, a misunderstanding that the Premiers appear to share. As my colleague, the Minister of State for Federal-Provincial Relations, made clear in his statement to the Joint Parliamentary Committee on the Constitution on August 15, the purpose of the federal government is to make clear that the Queen remains the "sovereign head" of Canada and to have that position embedded formally in our Constitution. All that the proposals do with

respect to the Monarch and the Governor General is to state the present reality as it is, taking into account the developments in our constitutional practice since 1867. It is the view of the federal government that, in any revised Constitution, such a statement of the present constitutional reality is desirable and it does not appear to me to be at variance with the views of the Premiers as expressed in your letter or in the second communiqué. It may well be that changes in the drafting of specific provisions could better reflect this intention and make more certain the desired result. We would, of course, welcome suggestions for such drafting changes.

### LAMONTAGNE/MACGUIGAN REPORT (1978)

#### The Monarchy

Some members of the Committee are convinced that Bill C-60 as drafted would significantly change the role of the Monarchy in Canada. Others do not agree. When Mr. Lalonde appeared before us, he observed that this role had evolved since 1867 and he stated that the provisions of the Bill were intended to take this evolution into account but not to change the present status of the Crown.

The Prime Minister confirmed that view in his letter to Mr. Blakeney. He wrote:

...the purpose of the federal government is to make clear that the Queen remains the "sovereign head" of Canada and to have that position embedded formally in our Constitution. All that the proposals do with respect to the Monarch and the Governor General is to state the present reality as it is, taking into account the developments in our constitutional practice since 1867. It is the view of the federal government that, in any revised Constitution, such a statement of the present constitutional reality is desirable...

The Committee takes note of this statement. A number of Members of the Committee think it is undesirable to codify the functions of all the major institutions of government which are now defined largely by evolving conventions. In any case, we are not yet in a position at this time to re-draft the provisions of Bill C-60 dealing with the Monarchy.

CONSTITUTIONAL CONFERENCE (1978)

NOTE: The source of each extract is  
shown at the end in brackets.

THE MONARCHY

THE VIEW OF THE GOVERNMENT OF ONTARIO ON THIS ISSUE  
IS UNEQUIVOCAL. THE POSITION, THE POWERS, AND THE  
RESPONSIBILITIES OF THE QUEEN AS REFLECTED IN THE WORDS OF  
THE CURRENT CONSTITUTION MUST BE CARRIED INTO ANY NEW  
DOCUMENT. BY THIS I MEAN:

- THE CROWN IS AND MUST BE RETAINED AS AN  
ESSENTIAL, INTEGRAL PART OF PARLIAMENT AND  
OF THE LEGISLATURES.
- THE CROWN IS AND MUST REMAIN THE SOURCE OF  
ALL EXECUTIVE AUTHORITY IN AND FOR CANADA.
- THE LAWS OF PARLIAMENT ARE AND MUST  
CONTINUE TO BE MADE AND APPROVED IN THE  
NAME OF THE QUEEN.

. . .

(Page 1 from Ontario paper "Monarchy")

. . .

THE MONARCHY HAS SERVED US WELL AND EARNED ITS PLACE IN OUR NATIONAL HERITAGE AND IN THE AFFECTION OF OUR PEOPLE. WE ADD NOTHING TO THE CAUSE OF CONSTITUTIONAL REFORM BY DIMINISHING THE POSITION OF THE CROWN.

. . .

IT MAY BE THAT WE SHOULD ALSO CONSIDER STEPS TO CLARIFY THE ROLE OF THE GOVERNOR-GENERAL AND TO ENHANCE THE GOVERNOR-GENERAL'S ABILITY TO REPRESENT FULLY THE CONSTITUTIONAL MONARCHY IN CANADA. AS LONG AS IT REMAINS CLEAR THAT THE POWERS THE GOVERNOR-GENERAL EXERCISES ARE, AS THEY WERE, VESTED IN THE CROWN'S REPRESENTATIVE, THERE WOULD BE NO BASIS FOR SERIOUS OBJECTION.

. . .

(Page 10 from New Brunswick's paper "Statement by the Honourable Richard Hatfield on the Constitution")

. . .

#### THE MONARCHY:

The province of Nova Scotia supports a constitutional Monarchy and asserts that there should be no change in the role of the Queen. We recognize that practices and conventions have developed through the years and that it is not always easy to state a convention of the constitution in legislative language. We believe that the powers of the Crown must remain vested in the Monarch and exercised in Canada by the Governor-General as her representative.

. . .

(Pages 3 and 4 from Nova Scotia paper "Address by the Honourable John M. Buchanan, Q.C.")

. . . it is the position  
of our government to support the existing role of the  
Monarchy.  
. . .

(Page 10 from Prince Edward Island's paper "Statement  
by the Honourable W. Bennett Campbell")



HOUSE OF COMMONS



## VII. HOUSE OF COMMONS

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B.N.A. ACT

## IV.—LEGISLATIVE POWER.

Constitution of  
Parliament of  
Canada.

17. There shall be One Parliament for Canada, consisting of the Queen, an Upper House styled the Senate, and the House of Commons.

Privileges, etc.,  
of Houses.

18. The privileges, immunities, and powers to be held, enjoyed, and exercised by the Senate and by the House of Commons, and by the Members thereof respectively, shall be such as are from time to time defined by Act of the Parliament of Canada, but so that any Act of the Parliament of Canada defining such privileges, immunities, and powers shall not confer any privileges, immunities, or powers exceeding those at the passing of such Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland, and by the Members thereof. (7)

20. There shall be a Session of the Parliament of Canada once at least in every Year, so that Twelve Months shall not intervene between the last Sitting of the Parliament in one Session and its first Sitting in the next Session. (9)

Yearly Session  
of the  
Parliament of  
Canada.

*The House of Commons.*

37. The House of Commons shall, subject to the Provisions of this Act, consist of two hundred and eighty-two members of whom ninety-five shall be elected for Ontario, seventy-five for Quebec, eleven for Nova Scotia, ten for New Brunswick, fourteen for Manitoba, twenty-eight for British Columbia, four for Prince Edward Island, twenty-one for Alberta, fourteen for Saskatchewan, seven for Newfoundland, one for the Yukon Territory and two for the Northwest Territories. (17)

Constitution of  
House of  
Commons in  
Canada.

38. The Governor General shall from Time to Time, in the Queen's Name, by Instrument under the Great Seal of Canada, summon and call together the House of Commons.

Summoning of  
House of  
Commons.

39. A Senator shall not be capable of being elected or of sitting or voting as a Member of the House of Commons.

Senators not to  
sit in House of  
Commons.

Electoral  
districts of the  
Four Provinces.

40. Until the Parliament of Canada otherwise provides, Ontario, Quebec, Nova Scotia, and New Brunswick shall, for the Purposes of the Election of Members to serve in the House of Commons, be divided into Electoral Districts as follows:

## 1.—ONTARIO.

Ontario shall be divided into the Counties, Ridings of Counties, Cities, Parts of Cities, and Towns enumerated in the First Schedule to this Act, each whereof shall be an Electoral District, each such District as numbered in that Schedule being entitled to return One Member.

## 2.—QUEBEC.

Quebec shall be divided into Sixty-five Electoral Districts, composed of the Sixty-five Electoral Divisions into which Lower Canada is at the passing of this Act divided under Chapter Two of the Consolidated Statutes of Canada, Chapter Seventy-five of the Consolidated Statutes for Lower Canada, and the Act of the Province of Canada of the Twenty-third Year of the Queen, Chapter One, or any other Act amending the same in force at the Union, so that each such Electoral Division shall be for the Purposes of this Act an Electoral District entitled to return One Member.

## 3.—NOVA SCOTIA.

Each of the Eighteen Counties of Nova Scotia shall be an Electoral District. The County of Halifax shall be entitled to return Two Members, and each of the other Counties One Member.

## 4.—NEW BRUNSWICK.

Each of the Fourteen Counties into which New Brunswick is divided, including the City and County of St. John, shall be an Electoral District. The City of St. John shall also be a separate Electoral District. Each of those Fifteen Electoral Districts shall be entitled to return One Member. (18)

Continuance of  
existing  
Election Laws  
until Parlia-  
ment of Canada  
otherwise  
provides.

**41.** Until the Parliament of Canada otherwise provides, all Laws in force in the several Provinces at the Union relative to the following Matters or any of them, namely,—the Qualifications and Disqualifications of Persons to be elected or to sit or vote as Members of the House of Assembly or Legislative Assembly in the several Provinces, the Voters at Elections of such Members, the Oaths to be taken by Voters, the Returning Officers, their Powers and Duties, the Proceedings at Elections, the Periods during which Elections may be continued, the Trial of controverted Elections, and Proceedings incident thereto, the vacating of Seats of Members, and the Execution of new Writs in case of Seats vacated otherwise than by Dissolution,—shall respectively apply to Elections of Members to serve in the House of Commons for the same several Provinces.

Provided that, until the Parliament of Canada otherwise provides, at any Election for a Member of the House of Commons for the District of Algoma, in addition to Persons qualified by the Law of the Province of Canada to vote, every Male British Subject, aged Twenty-one Years or upwards, being a Householder, shall have a Vote. (19)

**42. Repealed. (20)**

**43. Repealed. (21)**

**44.** The House of Commons on its first assembling after a General Election shall proceed with all practicable Speed to elect One of its Members to be Speaker. As to Election of Speaker of House of Commons.

**45.** In case of a Vacancy happening in the Office of Speaker by Death, Resignation, or otherwise, the House of Commons shall with all practicable Speed proceed to elect another of its Members to be Speaker. As to filling up Vacancy in Office of Speaker.

**46.** The Speaker shall preside at all Meetings of the House of Commons. Speaker to preside.

**47.** Until the Parliament of Canada otherwise provides, in case of the Absence for any Reason of the Speaker from the Chair of the House of Commons for a Period of Forty-eight consecutive Hours, the House may elect another of its Members to act as Speaker, and the Member so elected shall during the Continuance of such Absence of the Speaker have and execute all the Powers, Privileges, and Duties of Speaker. Provision in case of Absence of Speaker.  
(22)

Quorum of House of Commons.

**48.** The Presence of at least Twenty Members of the House of Commons shall be necessary to constitute a Meeting of the House for the Exercise of its Powers, and for that Purpose the Speaker shall be reckoned as a Member.

Voting in House of Commons.

**49.** Questions arising in the House of Commons shall be decided by a Majority of Voices other than that of the Speaker, and when the Voices are equal, but not otherwise, the Speaker shall have a Vote.

Duration of House of Commons.

**50.** Every House of Commons shall continue for Five Years from the Day of the Return of the Writs for choosing the House (subject to be sooner dissolved by the Governor General), and no longer.

Readjustment of representation in Commons.

**51. (1)** The number of members of the House of Commons and the representation of the provinces therein shall upon the coming into force of this subsection and thereafter on the completion of each decennial census be readjusted by such authority, in such manner, and from such time as the Parliament of Canada from time to time provides, subject and according to the following Rules:

Rules.

1. There shall be assigned to Quebec seventy-five members in the readjustment following the completion of the decennial census taken in the year 1971, and thereafter four additional members in each subsequent readjustment.

2. Subject to Rules 5(2) and (3), there shall be assigned to a large province a number of members equal to the number obtained by dividing the population of the large province by the electoral quotient of Quebec.

3. Subject to Rules 5(2) and (3), there shall be assigned to a small province a number of members equal to the number obtained by dividing

(a) the sum of the populations, determined according to the results of the penultimate decennial census, of the provinces (other than Quebec) having populations of less than one and a half million, determined according to the results of that census, by the sum of the numbers of members assigned to those provinces in the readjustment following the completion of that census; and

(b) the population of the small province by the quotient obtained under paragraph (a).

4. Subject to Rules 5(1)(a), (2) and (3), there shall be assigned to an intermediate province a number of members equal to the number obtained

(a) by dividing the sum of the populations of the provinces (other than Quebec) having populations of less than one and a half million by the sum of the number of members assigned to those provinces under any of Rules 3, 5(1)(b), (2) and (3);

(b) by dividing the population of the intermediate province by the quotient obtained under paragraph (a); and

(c) by adding to the number of members assigned to the intermediate province in the readjustment following the completion of the penultimate decennial census one-half of the difference resulting from the subtraction of that number from the quotient obtained under paragraph (b).

5. (1) On any readjustment,

(a) if no province (other than Quebec) has a population of less than one and a half million, Rule 4 shall not be applied and, subject to Rules 5(2) and (3), there shall be assigned to an intermediate province a number of members equal to the number obtained by dividing

(i) the sum of the populations, determined according to the results of the penultimate decennial census, of the provinces (other than Quebec) having populations of not less than one and a half million and not more than two and a half million, determined according to the results of that census, by the sum of the numbers of members assigned to those provinces in the readjustment following the completion of that census, and

(ii) the population of the intermediate province by the quotient obtained under subparagraph (i);

(b) if a province (other than Quebec) having a population of

(i) less than one and a half million, or

(ii) not less than one and a half million and not more than two and a half million

does not have a population greater than its population determined according to the results of the penultimate decennial census, it shall, subject to Rules 5(2) and (3), be assigned the number of members assigned to it in the readjustment following the completion of that census.

(2) On any readjustment,

(a) if, under any of Rules 2 to 5(1), the number of members to be assigned to a province (in this paragraph referred to as "the first province") is smaller than the number of members to be assigned to any other province not having a population greater than that of the first province, those Rules shall not be applied to the first province and it shall be assigned a number of members equal to the largest number of members to be assigned to any other province not having a population greater than that of the first province;

(b) if, under any of Rules 2 to 5(1)(a), the number of members to be assigned to a province is smaller than the number of members assigned to it in the readjustment following the completion of the penultimate decennial census, those Rules shall not be applied to it and it shall be assigned the latter number of members;

(c) if both paragraphs (a) and (b) apply to a province, it shall be assigned a number of members equal to the greater of the numbers produced under those paragraphs.

(3) On any readjustment,

(a) if the electoral quotient of a province (in this paragraph referred to as "the first province") obtained by dividing its population by the number of members to be assigned to it under any of Rules 2 to 5(2) is greater than the electoral quotient of Quebec, those Rules shall not be applied to the first province and it shall be assigned a number of members equal to the number obtained by dividing its population by the electoral quotient of Quebec;

(b) if, as a result of the application of Rule 6(2)(a), the number of members assigned to a province under paragraph (a) equals the number of members to be assigned to it under any of Rules 2 to 5(2), it shall be assigned that number of members and paragraph (a) shall cease to apply to that province.

# 6. (1) In these Rules,<sup>1</sup>

“electoral quotient” means, in respect of a province, the quotient obtained by dividing its population, determined according to the results of the then most recent decennial census, by the number of members to be assigned to it under any of Rules 1 to 5(3) in the readjustment following the completion of that census;

“intermediate province” means a province (other than Quebec) having a population greater than its population determined according to the results of the penultimate decennial census but not more than two and a half million and not less than one and a half million;

“large province” means a province (other than Quebec) having a population greater than two and a half million;

“penultimate decennial census” means the decennial census that preceded the then most recent decennial census;

“population” means, except where otherwise specified, the population determined according to the results of the then most recent decennial census;

“small province” means a province (other than Quebec) having a population greater than its population determined according to the results of the penultimate decennial census and less than one and a half million.

## (2) For the purposes of these Rules,

(a) if any fraction less than one remains upon completion of the final calculation that produces the number of members to be assigned to a province, that number of members shall equal the number so produced disregarding the fraction;

(b) if more than one readjustment follows the completion of a decennial census, the most recent of those readjustments shall, upon taking effect, be deemed to be the only readjustment following the completion of that census;

(c) a readjustment shall not take effect until the termination of the then existing Parliament. (23)

(2) The Yukon Territory as bounded and described in the schedule to chapter Y-2 of the Revised Statutes of Canada, 1970, shall be entitled to one member, and the Northwest Territories as bounded and described in section 2 of chapter N-22 of the Revised Statutes of Canada, 1970, shall be entitled to two members. (24)

Yukon  
Territory and  
Northwest  
Territories.

51A. Notwithstanding anything in this Act a province shall always be entitled to a number of members in the House of Commons not less than the number of senators representing such province. (25)

Constitution of  
House of  
Commons.

52. The Number of Members of the House of Commons may be from Time to Time increased by the Parliament of Canada, provided the proportionate Representation of the Provinces prescribed by this Act is not thereby disturbed.

Increase of  
Number of  
House of  
Commons.

*Money Votes; Royal Assent.*

**53.** Bills for appropriating any Part of the Public Revenue, or for imposing any Tax or Impost, shall originate in the House of Commons.

Appropriation  
and Tax Bills.

**54.** It shall not be lawful for the House of Commons to adopt or pass any Vote, Resolution, Address, or Bill for the Appropriation of any Part of the Public Revenue, or of any Tax or Impost, to any Purpose that has not been first recommended to that House by Message of the Governor General in the Session in which such Vote, Resolution, Address, or Bill is proposed.

Recommendation  
of Money  
Votes.

**55.** Where a Bill passed by the Houses of the Parliament is presented to the Governor General for the Queen's Assent, he shall declare, according to his Discretion, but subject to the Provisions of this Act and to Her Majesty's Instructions, either that he assents thereto in the Queen's Name, or that he withholds the Queen's Assent, or that he reserves the Bill for the Signification of the Queen's Pleasure.

Royal Assent to  
Bills, etc.

Disallowance  
by Order in  
Council of Act  
assented to by  
Governor  
General.

**56.** Where the Governor General assents to a Bill in the Queen's Name, he shall by the first convenient Opportunity send an authentic Copy of the Act to one of Her Majesty's Principal Secretaries of State, and if the Queen in Council within Two Years after Receipt thereof by the Secretary of State thinks fit to disallow the Act, such Disallowance (with a Certificate of the Secretary of State of the Day on which the Act was received by him) being signified by the Governor General, by Speech or Message to each of the Houses of the Parliament or by Proclamation, shall annul the Act from and after the Day of such Signification.

Signification of  
Queen's  
Pleasure on Bill  
reserved.

**57.** A Bill reserved for the Signification of the Queen's Pleasure shall not have any Force unless and until, within Two Years from the Day on which it was presented to the Governor General for the Queen's Assent, the Governor General signifies, by Speech or Message to each of the Houses of the Parliament or by Proclamation, that it has received the Assent of the Queen in Council.

An Entry of every such Speech, Message, or Proclamation shall be made in the Journal of each House, and a Duplicate thereof duly attested shall be delivered to the proper Officer to be kept among the Records of Canada.

VICTORIA CHARTER (1971)

No proposal

## SPECIAL JOINT COMMITTEE ON THE CONSTITUTION (1972)

42. The mechanism of redistribution of seats in the House of Commons as well as the limitations implied in the 15% rule and the Senate rule should be retained in the Constitution. The formula of representation, however, subject to our recommendations on the Bill of Rights, should be the exclusive prerogative of the House of Commons, to be dealt with by ordinary legislation.
43. Every House of Commons should continue for four years, from the day of the return of the writs for choosing the House and no longer, provided that, and notwithstanding any Royal Prerogative, the Governor General should have the power to dissolve Parliament during that period:
  - (1) when the Government is defeated
    - (a) on a motion expressing no confidence in the Government; or
    - (b) on a vote on a specific bill or portion of a bill which the Government has previously declared should be construed as a motion of want of confidence; or
  - (2) when the House of Commons passes a resolution requesting dissolution of Parliament.

## DRAFT PROCLAMATION (1976)

No proposal

## PREMIERS' CONFERENCES (1976)

No proposal

## DRAFT RESOLUTION (1977)

No proposal

BILL C-60 (1978)*(c) Legislative Authority**(i) General*

Constitution of  
Parliament of  
Canada

**56.** There shall be one Parliament for Canada, consisting of the Governor General of Canada, an upper house styled the House of the Federation, and the House of Commons.

Summoning of  
Houses of  
Parliament

**57.** The Governor General of Canada shall from time to time, by instrument under the Great Seal of Canada, summon and call together the Houses of the Parliament of Canada to meet in Parliament assembled.

Privileges, etc.,  
of Houses

**58.** The privileges, immunities and powers to be held, enjoyed and exercised by each of the Houses of Parliament and the members thereof respectively shall be such as are from time to time defined by Act of the Parliament of Canada.

Rules of  
Houses

**59.** (1) Subject to this Act, each House of Parliament shall decide its own rules and those applicable to its respective committees, and shall provide for their administration and enforcement.

Deliberations to  
be public unless  
otherwise  
decided

(2) The deliberations of each House of Parliament shall be open to the public unless a decision is made in the case of any particular deliberations thereof that they shall be held in closed session.

Records, etc., to  
be available to  
public unless  
otherwise  
decided

(3) Subject to this Act, the records and journals of each House of Parliament shall be made available to the public in such form and manner as each House may decide, except such particular parts of its records and journals as it decides should be kept secret.

Participation of  
member of  
Cabinet in  
deliberations of  
other House

**60.** Where a member of the Cabinet who is a member of one of the Houses of Parliament has been requested or invited, by or with the concurrence of the Speaker of the other House, to participate in the deliberations of the other House on a particular occasion or on occasions of a particular kind, he or she may accordingly rise in and address the other House, answer questions therein or take part in any debate therein, subject to and in accordance with the rules of that House, but is not entitled to vote on any matter in that House.

**56-60.** These sections describe the composition of the Parliament of Canada and would amend or amplify present provisions to reflect present practice.

**56.** This section would modify the present s. 17 to recognize the role of the Governor General as a participant in Parliament. It also reflects the proposed replacement of the Senate with a new House of the Federation.

**57.** This section derives from the present s. 38 and reflects the present practice of summoning Parliament for the dispatch of business.

**58.** This section would remove a restriction in the present s. 18 by virtue of which Canadian parliamentary privileges have been limited so as not to exceed those enjoyed by the United Kingdom House of Commons and its members.

**59.** These new provisions would incorporate into the written Constitution certain important parliamentary rules relating to public access to debates and records. They also state the principle that, subject to this Act, each House of Parliament has the authority to decide its own rules.

**60.** New. This section would enable a Minister who is a member of the House of Commons to speak in the House of the Federation and a Minister who is a member of the House of the Federation to speak in the House of Commons.

Members to be  
Canadian  
citizens

**61.** No person is eligible to be a member of either of the Houses of Parliament unless he or she is a citizen of Canada.

**61.** This section, which would require members of both Houses to be citizens, is new but reflects ss. 14(1) and 20 of the *Canada Elections Act*. (See also the present s. 23.)

(iii) The House of Commons

Constitution of  
House of  
Commons

**71.** Subject to this Act, the House of Commons shall consist of 282 members, of whom 95 shall be elected for Ontario, 75 for Quebec, 11 for Nova Scotia, 10 for New Brunswick, 14 for Manitoba, 28 for British Columbia, 4 for Prince Edward Island, 14 for Saskatchewan, 21 for Alberta, 7 for Newfoundland, 1 for the Yukon Territory and 2 for the Northwest Territories.

**71.** This section, which provides for a House of Commons of 282 members, is, in substance, the present s. 37.

Readjustment  
of representa-  
tion in  
Commons

**72.** On the completion of the decennial census required by this Act to be taken in the year 1981 and on the completion of each decennial census taken thereafter, the number of members of the House of Commons and the representation of the provinces therein shall be readjusted by such authority, in such manner and from such time as the Parliament of Canada provides, subject and according to the following rules, and with the Yukon Territory being entitled to one member thereof and the Northwest Territories being entitled to two members thereof:

**72.** This section, which provides for the readjustment of membership in the House of Commons after each decennial census, is the present s. 51 with a technical modification in the portion preceding Rule 2.

**1.** There shall be assigned to Quebec 79 members in the readjustment following the completion of the decennial census taken in the year 1981 and thereafter 4 additional members in each subsequent readjustment.

**2.** Subject to Rules 5(2) and (3), there shall be assigned to a large province a number of members equal to the number obtained by dividing the population of the large province by the electoral quotient of Quebec.

3. Subject to Rules 5(2) and (3), there shall be assigned to a small province a number of members equal to the number obtained by dividing

(a) the sum of the populations, determined according to the results of the penultimate decennial census, of the provinces (other than Quebec) having populations of less than one and a half million, determined according to the results of that census, by the sum of the numbers of members assigned to those provinces in the readjustment following the completion of that census; and

(b) the population of the small province by the quotient obtained under paragraph (a).

4. Subject to Rules 5(1)(a), (2) and (3), there shall be assigned to an intermediate province a number of members equal to the number obtained

(a) by dividing the sum of the populations of the provinces (other than Quebec) having populations of less than one and a half million by the sum of the number of members assigned to those provinces under any of Rules 3, 5(1)(b), (2) and (3);

(b) by dividing the population of the intermediate province by the quotient obtained under paragraph (a); and

(c) by adding to the number of members assigned to the intermediate province in the readjustment following the completion of the penultimate decennial census one-half of the difference resulting from the subtraction of that number from the quotient obtained under paragraph (b).

5. (1) On any readjustment,

(a) if no province (other than Quebec) has a population of less than one and a half million, Rule 4 shall not be applied and, subject to Rules 5(2) and (3), there shall be assigned to an intermediate province a number of members equal to the number obtained by dividing

- (i) the sum of the populations, determined according to the results of the penultimate decennial census, of the provinces (other than Quebec) having populations of not less than one and a half million and not more than two and a half million, determined according to the results of that census, by the sum of the numbers of members assigned to those provinces in the readjustment following the completion of that census, and
  - (ii) the population of the intermediate province by the quotient obtained under subparagraph (i);
- (b) if a province (other than Quebec) having a population of

- (i) less than one and a half million, or
- (ii) not less than one and a half million and not more than two and a half million

does not have a population greater than its population determined according to the results of the penultimate decennial census, it shall, subject to Rules 5(2) and (3), be assigned the number of members assigned to it in the readjustment following the completion of that census.

(2) On any readjustment,

- (a) if, under any of Rules 2 to 5(1), the number of members to be assigned to a province (in this paragraph referred to as “the first province”) is smaller than the number of members to be assigned to any other province not having a population greater than that of the first province, those Rules shall not be applied to the first province and it shall be assigned a number of members equal to the largest number of members to be assigned to any other province not having a population greater than that of the first province;
- (b) if, under any of Rules 2 to 5(1)(a), the number of members to be assigned to a province is smaller than the number of members assigned to it in the readjustment following the completion of the penultimate decennial census, those Rules shall not be applied to it and it shall be assigned the latter number of members;

(c) if both paragraphs (a) and (b) apply to a province, it shall be assigned a number of members equal to the greater of the numbers produced under those paragraphs.

(3) On any readjustment,

(a) if the electoral quotient of a province (in this paragraph referred to as “the first province”) obtained by dividing its population by the number of members to be assigned to it under any of Rules 2 to 5(2) is greater than the electoral quotient of Quebec, those Rules shall not be applied to the first province and it shall be assigned a number of members equal to the number obtained by dividing its population by the electoral quotient of Quebec;

(b) if, as a result of the application of Rule 6(2)(a), the number of members assigned to a province under paragraph (a) equals the number of members to be assigned to it under any of Rules 2 to 5(2), it shall be assigned that number of members and paragraph (a) shall cease to apply to that province.

6. (1) In these Rules,

“electoral quotient” means, in respect of a province, the quotient obtained by dividing its population, determined according to the results of the then most recent decennial census, by the number of members to be assigned to it under any of Rules 1 to 5(3) in the readjustment following the completion of that census;

“intermediate province” means a province (other than Quebec) having a population greater than its population determined according to the results of the penultimate decennial census but not more than two and a half million and not less than one and a half million;

“large province” means a province (other than Quebec) having a population greater than two and a half million;

“penultimate decennial census” means the decennial census that preceded the then most recent decennial census;

“population” means, except where otherwise specified, the population determined according to the results of the then most recent decennial census;

“small province” means a province (other than Quebec) having a population greater than its population determined according to the results of the penultimate decennial census and less than one and a half million.

- (2) For the purposes of these Rules,
  - (a) if any fraction less than one remains upon completion of the final calculation that produces the number of members to be assigned to a province, that number of members shall equal the number so produced disregarding the fraction;
  - (b) if more than one readjustment follows the completion of a decennial census, the most recent of those readjustments shall, upon taking effect, be deemed to be the only readjustment following the completion of that census;
  - (c) a readjustment shall not take effect until the termination of the then existing Parliament.

Minimum number of members to represent any province

73. Notwithstanding anything in this Act, a province shall always be represented in the House of Commons by a number of members not less than the number of members of the House of the Federation representing that province.

Increase or decrease in membership of House

74. The total number of members of the House of Commons may be from time to time increased or decreased by the Parliament of Canada, but so that, as nearly as reasonably may be, the proportionate representation of the provinces therein that is prescribed by this Act is not thereby disturbed.

73. This section, in substance, repeats the present s. 51A. It provides that a province shall have at least the same number of members in the House of Commons as it has in the House of the Federation. It would increase the representation of Newfoundland in the House of Commons from seven members, as prescribed by s. 71, to eight members.

74. This section, which provides that increases or decreases in the number of members for a province shall not change the proportionate representation of the provinces in the House of Commons, is the present s. 52 modified to a minor degree.

Laws respecting  
House to  
continue in  
force until  
altered

75. Until the Parliament of Canada otherwise provides, all laws in force in Canada with respect to the election of members to the House of Commons including controverted elections and proceedings with respect thereto, the qualifications and disqualifications of persons to be elected or to sit or vote as members thereof, the oaths to be made or subscribed by such members, the election of a Speaker of the House of Commons originally and on any vacancy, the powers and duties of the Speaker, the selection of and the powers and duties of deputies of the Speaker, and the quorum of and mode of voting in the House of Commons shall continue in force after the commencement of this Act; and in all other respects, subject to this Act, the constitution of the House of Commons shall continue as it was at the commencement of this Act until altered by the Parliament of Canada under the authority of the Constitution of Canada.

Appropriation  
and tax Bills to  
originate in  
House of  
Commons

76. Bills proposed to Parliament for appropriating any part of the public revenue, or for imposing any tax or impost, shall originate in the House of Commons.

Recommendation  
of money  
votes

77. It shall not be lawful for the House of Commons to adopt or pass any vote, resolution, address or Bill for the appropriation of any part of the public revenue, or of any tax or impost, to any purpose that has not been first recommended to the House of Commons by message of the Governor General of Canada in the session in which that vote, resolution, address or Bill is proposed.

Right of  
Commons to  
refuse to  
approve money  
votes

78. The right of the House of Commons to refuse to adopt or pass any vote, resolution, address or Bill for the appropriation of any part of the public revenue, or of any tax or impost, is a fundamental principle of the Constitution of Canada.

75. This section, which provides that the present laws relating to the House of Commons continue in force until changed, is new but is equivalent to the present s. 41.

76. This section, which would require money Bills to originate in the House of Commons, is, in substance, the present s. 53. (See also s. 68 of the Bill.)

77. This section, which would require a recommendation from the Governor General for money votes, is, in substance, the present s. 54.

78. This section, although new, expresses a present fundamental parliamentary principle—the right of the House of Commons to refuse to pass a money vote.

## REGINA PREMIERS' CONFERENCE (1979)

No proposal

LAMONTAGNE/MACGUIGAN REPORT (OCTOBER 1978)

No proposal

CONSTITUTIONAL CONFERENCE (1978)

No proposal

## UPPER HOUSE



VIII. UPPER HOUSE

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B.N.A. ACT

## IV.—LEGISLATIVE POWER.

Constitution of  
Parliament of  
Canada.

17. There shall be One Parliament for Canada, consisting of the Queen, an Upper House styled the Senate, and the House of Commons.

Privileges, etc.,  
of Houses.

18. The privileges, immunities, and powers to be held, enjoyed, and exercised by the Senate and by the House of Commons, and by the Members thereof respectively, shall be such as are from time to time defined by Act of the Parliament of Canada, but so that any Act of the Parliament of Canada defining such privileges, immunities, and powers shall not confer any privileges, immunities, or powers exceeding those at the passing of such Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland, and by the Members thereof. (7)

20. There shall be a Session of the Parliament of Canada once at least in every Year, so that Twelve Months shall not intervene between the last Sitting of the Parliament in one Session and its first Sitting in the next Session. (9)

Yearly Session  
of the  
Parliament of  
Canada.

*The Senate.*

21. The Senate shall, subject to the Provisions of this Act, consist of One Hundred and four Members, who shall be styled Senators. (10)

Number of  
Senators.

22. In relation to the Constitution of the Senate Canada shall be deemed to consist of Four Divisions:—

Representation  
of Provinces in  
Senate.

1. Ontario;
2. Quebec;
3. The Maritime Provinces, Nova Scotia and New Brunswick, and Prince Edward Island;
4. The Western Provinces of Manitoba, British Columbia, Saskatchewan, and Alberta;

which Four Divisions shall (subject to the Provisions of this Act) be equally represented in the Senate as follows: Ontario by twenty-four senators; Quebec by twenty-four senators; the Maritime Provinces and Prince Edward Island by twenty-four senators, ten thereof representing Nova Scotia, ten thereof representing New Brunswick, and four thereof representing Prince Edward Island; the Western Provinces by twenty-four senators, six thereof representing Manitoba, six thereof representing British Columbia, six thereof representing Saskatchewan, and six thereof representing Alberta; Newfoundland shall be entitled to be represented in the Senate by six members; the Yukon Territory and the Northwest Territories shall be entitled to be represented in the Senate by one member each.

In the Case of Quebec each of the Twenty-four Senators representing that Province shall be appointed for One of the Twenty-four Electoral Divisions of Lower Canada specified in Schedule A. to Chapter One of the Consolidated statutes of Canada. (11)

Qualifications  
of Senator.

23. The Qualification of a Senator shall be as follows:

- (1) He shall be of the full age of Thirty Years:
- (2) He shall be either a natural-born Subject of the Queen, or a Subject of the Queen naturalized by an Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of One of the Provinces of Upper Canada, Lower Canada, Canada, Nova Scotia, or New Brunswick, before the Union, or of the Parliament of Canada, after the Union:
- (3) He shall be legally or equitably seised as of Freehold for his own Use and Benefit of Lands or Tenements held in Free and Common Socage, or seised or possessed for his own Use and Benefit of Lands or Tenements held in Franc-alieu or in Roture, within the Province for which he is appointed, of the Value of Four thousand Dollars, over and above all Rents, Dues, Debts, Charges, Mortgages, and Incumbrances due or payable out of or charged on or affecting the same:
- (4) His Real and Personal Property shall be together worth Four thousand Dollars over and above his Debts and Liabilities:
- (5) He shall be resident in the Province for which he is appointed:
- (6) In the Case of Quebec he shall have his Real Property Qualification in the Electoral Division for which he is appointed, or shall be resident in that Division. (11A)

24. The Governor General shall from Time to Time, in the Queen's Name, by Instrument under the Great Seal of Canada, summon qualified Persons to the Senate; and, subject to the Provisions of this Act, every Person so summoned shall become and be a Member of the Senate and a Senator. Summons of  
Senator.

25. Repealed. (12)

26. If at any Time on the Recommendation of the Governor General the Queen thinks fit to direct that Four or Eight Members be added to the Senate, the Governor General may by Summons to Four or Eight qualified Persons (as the Case may be), representing equally the Four Divisions of Canada, add to the Senate accordingly. (13) Addition of  
Senators in  
certain cases.

27. In case of such Addition being at any Time made, the Governor General shall not summon any Person to the Senate, except upon a further like Direction by the Queen on the like Recommendation, to represent one of the Four Divisions until such Division is represented by Twenty-four Senators and no more. (14)

Reduction of  
Senate to  
normal  
Number.

Maximum  
Number of  
Senators.

28. The Number of Senators shall not at any Time exceed One Hundred and twelve. (15)

Tenure of Place  
in Senate.

29. (1) Subject to subsection (2), a Senator shall, subject to the provisions of this Act, hold his place in the Senate for life.

Retirement  
upon attaining  
age of  
seventy-five  
years.

(2) A Senator who is summoned to the Senate after the coming into force of this subsection shall, subject to this Act, hold his place in the Senate until he attains the age of seventy-five years. (15A)

Resignation of  
Place in Senate.

30. A Senator may by Writing under his Hand addressed to the Governor General resign his Place in the Senate, and thereupon the same shall be vacant.

Disqualification  
of Senators.

31. The Place of a Senator shall become vacant in any of the following Cases:

- (1) If for Two consecutive Sessions of the Parliament he fails to give his Attendance in the Senate:
- (2) If he takes an Oath or makes a Declaration or Acknowledgment of Allegiance, Obedience, or Adherence to a Foreign Power, or does an Act whereby he becomes a Subject or Citizen, or entitled to the Rights or Privileges of a Subject or Citizen, of a Foreign Power:
- (3) If he is adjudged Bankrupt or Insolvent, or applies for the Benefit of any Law relating to Insolvent Debtors, or becomes a public Defaulter:
- (4) If he is attainted of Treason or convicted of Felony or of any infamous Crime:
- (5) If he ceases to be qualified in respect of Property or of Residence; provided, that a Senator shall not be deemed to have ceased to be qualified in respect of Residence by reason only of his residing at the Seat of the Government of Canada while holding an Office under that Government requiring his Presence there.

Summons on  
Vacancy in  
Senate.

32. When a Vacancy happens in the Senate by Resignation, Death, or otherwise, the Governor General shall by Summons to a fit and qualified Person fill the Vacancy.

33. If any Question arises respecting the Qualification of a Senator or a Vacancy in the Senate the same shall be heard and determined by the Senate. Questions as to Qualifications and Vacancies in Senate.

34. The Governor General may from Time to Time, by Instrument under the Great Seal of Canada, appoint a Senator to be Speaker of the Senate, and may remove him and appoint another in his Stead. (16) Appointment of Speaker of Senate.

35. Until the Parliament of Canada otherwise provides, the Presence of at least Fifteen Senators, including the Speaker, shall be necessary to constitute a Meeting of the Senate for the Exercise of its Powers. Quorum of Senate.

36. Questions arising in the Senate shall be decided by a Majority of Voices, and the Speaker shall in all Cases have a Vote, and when the Voices are equal the Decision shall be deemed to be in the Negative. Voting in Senate.

## VICTORIA CHARTER (1971)

No proposal

## SPECIAL JOINT COMMITTEE ON THE CONSTITUTION (1972)

35. The present full veto power of the Senate over legislation should be reduced to a suspensive veto for six months according to the following formula: a bill may become law without the consent of the Senate (1) if the House of Commons, having once passed it, passes it again no less than six months after it was rejected or finally amended by the Senate or, (2) if, within 6 months of third reading of a bill by the House of Commons the Senate has not completed consideration of it, and the House of Commons again passes it at any time after the expiration of the 6 months, but any period when Parliament is prorogued or dissolved shall not be counted in computing the 6 months.
36. The investigative role of the Senate, which has gained more importance in recent years, should be continued and expanded at the initiative of the Senate itself, and the Government should also make more use of the Senate in this way.
37. The Government should be entitled to introduce in the Senate all bills, including money bills but excluding appropriation bills, before their approval by the House of Commons, provided that, in the case of money bills, they should be introduced by the leader of the Government in the Senate on behalf of the Government.

38. The distribution of Senators should be as follows: Newfoundland 6, Prince Edward Island 4, Nova Scotia 10, New Brunswick 10, Quebec 24, Ontario 24, Manitoba 12, Saskatchewan 12, Alberta 12, British Columbia 12, the Yukon Territory 2, and the Northwest Territories 2: a total of 130.
39. All Senators should continue to be appointed by the Federal Government: as vacancies occur in the present Senate, one-half of the Senators from each Province and Territory should be appointed in the same manner as at present; the other half from each Province and Territory should be appointed by the Federal Government from a panel of nominees submitted by the appropriate Provincial or Territorial Government.
40. The personal requirements for appointment to the Senate should be limited to those required for eligibility as an elector in the Canada Elections Act, plus residence in the Province for which a Senator is appointed. The Quebec structure of electoral divisions should be abolished.
41. The compulsory retirement age for all new Senators should be seventy years. Upon retirement, Senators should retain the right to the title and precedence of Senators and the right to participate in the work of the Senate or of its Committees but not the right to vote or to receive the indemnity of Senators.

## DRAFT PROCLAMATION (1976)

No proposal

## PREMIERS' CONFERENCES (1976)

- e) Senate Representation - Discussion on this subject related to British Columbia's proposal that Senate representation for that province be increased.  
(Extract from letter of October 14, 1976 from the Premier of Alberta to the Prime Minister of Canada)

## BRITISH COLUMBIA PAPER ON THE CONSTITUTION OF CANADA (NOV 1976)

(a) *The Senate of Canada*—The Terms of Union of British Columbia's entry into Confederation in 1871 gave British Columbia three Senators out of a total of 77 Senators at that date. With only 1 per cent of the population of Canada, British Columbia could be considered to have had a fair degree of representation. By amendment to the *British North America Act* in 1915, British Columbia's representation was increased from three to six out of a total of 96 Senators. Again, the 1915 adjustments recognized the realities of British Columbia's place in Confederation at that time for the Provincial population in that year was approximately 5.4 per cent of the nation's total.

British Columbia's population is now 10.8 per cent. It has doubled in percentage terms over the rest of Canada since 1915 and the time has come for major adjustments in representation in the Senate. It is no longer acceptable for the first and second of Canada's provinces to have 24 Senators each whereas the third-largest Province has only six. British Columbia calls for today's realities to be recognized and that this manifestly unfair imbalance be rectified by increasing its representation in the Senate to 12.

Quite apart from the need for more representation from British Columbia in the Senate, there is a need for other Senate reforms to make it a more viable part of the federal law-making process. In most confederations, one of the chief functions of an Upper House at the national level is to ensure that the point of view of the various regions of the federation are properly brought to bear on the federal law-making process. Because of inequitable representation and an inappropriate method of appointment, the Senate of Canada is not performing the role it was intended to have. In the Federal Republic of Germany, the Second Chamber, the Bundesrat, is directly representative of the state governments and has extensive powers of veto over all matters affecting state interests as well as a suspensive power over national matters. In the United States, each state has equal representation in the U.S. Senate. Both of these instances exemplify more effective regional and state representation than is the case in Canada.

British Columbia believes that the role of Senate, the means of appointment to the Senate, and the tenure of appointees ought to be carefully and comprehensively reassessed and constitutional changes made so as to have the regional points of view reflected in the national law-making process.

(Page 6 from November 1976 British Columbia paper "What is British Columbia's Position on the Constitution of Canada")

DRAFT RESOLUTION (1977)

Art. 12       Notwithstanding anything in the Constitution of Canada or in Article 8,

- (a) the number of Senators provided for under section 21 of the British North America Act, 1867, as amended, is increased from one hundred and four to one hundred and sixteen;
- (b) the maximum number of Senators is increased from one hundred and twelve to one hundred and twenty-four;
- (c) the portion of the first sentence following paragraph 2 of section 22 of the British North America Act, 1867, as amended, shall read as follows:

- "3. The Atlantic Provinces of Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland;
- 4. The Western Provinces of Manitoba, British Columbia, Saskatchewan and Alberta;

which Four Divisions shall (subject to the Provisions of this Act) be represented in the Senate as follows: Ontario by twenty-four Senators; Quebec by twenty-four Senators; the Atlantic Provinces by thirty Senators, ten thereof representing Nova Scotia, ten thereof representing New Brunswick, four thereof representing Prince Edward Island and six thereof representing Newfoundland; the Western Provinces by thirty-six Senators, seven thereof representing Manitoba, twelve thereof representing British Columbia, seven thereof representing Saskatchewan, and ten thereof representing Alberta; and the Yukon Territory and the Northwest Territories shall be entitled to be represented in the Senate by one member each."

Art. 13      For the purposes of this Part, the term "Province" in section 23 of the British North America Act, 1867 includes the Yukon Territory and the Northwest Territories.

# BILL C-60 (1978)

## (c) *Legislative Authority*

### (i) General

Constitution of  
Parliament of  
Canada

**56.** There shall be one Parliament for Canada, consisting of the Governor General of Canada, an upper house styled the House of the Federation, and the House of Commons.

Summoning of  
Houses of  
Parliament

**57.** The Governor General of Canada shall from time to time, by instrument under the Great Seal of Canada, summon and call together the Houses of the Parliament of Canada to meet in Parliament assembled.

Privileges, etc.,  
of Houses

**58.** The privileges, immunities and powers to be held, enjoyed and exercised by each of the Houses of Parliament and the members thereof respectively shall be such as are from time to time defined by Act of the Parliament of Canada.

Rules of  
Houses

**59.** (1) Subject to this Act, each House of Parliament shall decide its own rules and those applicable to its respective committees, and shall provide for their administration and enforcement.

Deliberations to  
be public unless  
otherwise  
decided

(2) The deliberations of each House of Parliament shall be open to the public unless a decision is made in the case of any particular deliberations thereof that they shall be held in closed session.

Records, etc., to  
be available to  
public unless  
otherwise  
decided

(3) Subject to this Act, the records and journals of each House of Parliament shall be made available to the public in such form and manner as each House may decide, except such particular parts of its records and journals as it decides should be kept secret.

Participation of  
member of  
Cabinet in  
deliberations of  
other House

**60.** Where a member of the Cabinet who is a member of one of the Houses of Parliament has been requested or invited, by or with the concurrence of the Speaker of the other House, to participate in the deliberations of the other House on a particular occasion or on occasions of a particular kind, he or she may accordingly rise in and address the other House, answer questions therein or take part in any debate therein, subject to and in accordance with the rules of that House, but is not entitled to vote on any matter in that House.

**56-60.** These sections describe the composition of the Parliament of Canada and would amend or amplify present provisions to reflect present practice.

**56.** This section would modify the present s. 17 to recognize the role of the Governor General as a participant in Parliament. It also reflects the proposed replacement of the Senate with a new House of the Federation.

**57.** This section derives from the present s. 38 and reflects the present practice of summoning Parliament for the dispatch of business.

**58.** This section would remove a restriction in the present s. 18 by virtue of which Canadian parliamentary privileges have been limited so as not to exceed those enjoyed by the United Kingdom House of Commons and its members.

**59.** These new provisions would incorporate into the written Constitution certain important parliamentary rules relating to public access to debates and records. They also state the principle that, subject to this Act, each House of Parliament has the authority to decide its own rules.

**60.** New. This section would enable a Minister who is a member of the House of Commons to speak in the House of the Federation and a Minister who is a member of the House of the Federation to speak in the House of Commons.

## (ii) The House of the Federation

Constitution of  
House of the  
Federation

**62.** The House of the Federation shall consist of 118 members, who shall be selected as hereinafter provided in accordance with the following provincial and territorial distribution of its members:

- from the Atlantic provinces, 32 members, of whom 10 shall be selected from Nova Scotia, 10 from New Brunswick, 4 from Prince Edward Island, and 8 from Newfoundland;
- from Quebec, 24 members;
- from Ontario, 24 members;
- from the Western provinces, 36 members, of whom 8 shall be selected from Manitoba, 10 from British Columbia, 8 from Saskatchewan and 10 from Alberta;

with one member being selected from the Yukon Territory and one from the Northwest Territories.

Selection of  
members from  
provinces and  
territories

**63.** (1) Of the total number of members of the House of the Federation to be selected from any province,

(a) one-half shall be selected by the House of Commons within the first thirty sitting days of the House of Commons next following each general election of members of that House, and

(b) one-half shall be selected by the legislative assembly of that province within the first thirty sitting days of the legislative assembly next following each general election of members of that assembly,

and the members of the House of the Federation from the Yukon Territory and the Northwest Territories shall be selected by the Governor General in Council not later than the end of the first thirty sitting days of the councils, respectively, of those territories next following the day fixed by proclamation pursuant to subsection (2) and thereafter next following each general election of members thereof.

**62-70.** New. These sections would create a new 118-seat House of the Federation to replace the present 104-seat Senate and provide for the selection of members and the powers and functions of the new House. While some of the provisions would come into effect when the Bill commences to have effect, the new House would not replace the Senate until after its members have been selected. (See s. 141.)

**62.** Seats in the new House would be based on the four traditional Senate regions. However, while Ontario and Quebec would each retain 24 seats, the eastern region would be increased by 2 additional seats for Newfoundland and the western region would acquire 12 new seats: 4 for British Columbia, 4 for Alberta, 2 for Saskatchewan and 2 for Manitoba. The two territories would retain one seat each. (See the present s. 22.)

**63.** (1) The members of the new House from each province would be selected, half by the federal House of Commons after each federal general election, and half by the provincial legislative assembly after each provincial general election. Members from the territories would be selected by the Governor General in Council after each election of the territorial councils.

First selection  
of members

(2) The first selection of members of the House of the Federation made by the House of Commons shall be made within the first sixty sitting days of the House of Commons next following such day, being a day not later than six months after the commencement of this Act, as is fixed by proclamation of the Governor General of Canada on the advice of the Council of State of Canada for the making of that selection, and the first selection of such members made by the legislative assembly of any province shall be made within the first sixty sitting days of that legislative assembly next following that day, but at any time after that day, the Governor General in Council may name a number of persons equal to the number of members to be selected by the House of Commons at the first such selection to be made by it, and the Lieutenant Governor in Council of any province may name a number of persons equal to the number of members to be selected by the legislative assembly of that province at the first such selection to be made by it, to be members of the House of the Federation until the times, respectively, when those first selections are made.

Where selection  
not made in  
time

(3) In the event that one-half of the total number of members of the House of the Federation to be selected from any particular province is not selected by either the House of Commons or the legislative assembly of that province, as the case may be, within the time prescribed therefor by subsection (1) or (2), the other of those bodies may proceed forthwith to select a number of members from that province sufficient to make up that one-half.

Members  
named or  
selected in  
special  
circumstances

(4) Every person named under subsection (2) or selected under subsection (3) to be a member of the House of the Federation shall be deemed for all purposes to have been selected thereto in accordance with this section, by the body by which he or she was required by subsection (1) to be selected and within the time prescribed therefor by that subsection.

Tenure and  
resignation of  
members and  
filling of  
vacancies

(5) Every member of the House of the Federation selected thereto in accordance with this section shall continue to be a member of that House, subject to any disqualification provided for or prescribed pursuant to section 65, until the next following selection of members of that House to be

(2) This subsection would make provision for the Governor General in Council and the Lieutenant Governor in Council of a province to name persons to be interim members of the new House until the regular members of it could be selected and also for the first selection of those regular members by the House of Commons and legislative assemblies.

(3) If either the House of Commons or a provincial legislative assembly were to fail to select its half of the members of the House of the Federation within the specified time, the other legislative authority would be empowered to select members to fill the remaining vacancies.

(4) Members named or selected in special circumstances would be deemed to have been selected as required by subsection (1).

(5) Members would hold office until the next general election of the body that is required by subsection (1) to select them. If a member were to resign or die, subsection (5) would require the vacancy to be filled as soon as reasonably possible.

made as provided in subsection (1) by the body by which that member was required by subsection (1) to be selected has been completed, or until the time prescribed by that subsection for the making of that selection has elapsed without that selection having been made, as the case may be, but any member of the House of the Federation may resign his or her place therein by notice in writing to the Speaker of that House and to the Speaker or other presiding officer of the body by which he or she was required by subsection (1) to be selected, and any vacancy occurring in the membership of that House, whether by resignation or otherwise, shall be filled by selection by the appropriate body therefor as soon as reasonably may be after the occurrence of the vacancy and in default of such selection by that body within a reasonable time thereafter, by any other body by which, if subsection (3) were applicable in the circumstances of that vacancy, the selection could have been made.

Eligibility for  
selection to be  
member of  
House

**64. (1)** No person is eligible to be selected to be a member of the House of the Federation from any province

(a) if that person is a member of the House of Commons or of the legislative assembly of that province;

(b) unless that person has been ordinarily resident within that province for an aggregate period of at least five years during the ten years immediately preceding the making of such selection; and

(c) unless that person has been nominated for selection for that purpose from that province,

(i) in the case of any such selection to be made by the House of Commons, by the Governor General in Council, following consultation on his or her nomination among the leaders in the House of Commons of each of the recognized political parties represented in that House, and

(ii) in the case of any such selection to be made by the legislative assembly of that province, by the Lieutenant Governor in Council of that province, following consultation on his or her nomination among the leaders in the legislative assembly of each of the recognized political parties represented therein;

**64. (1)** To be eligible for selection to the new House, a person could not be a member of the House of Commons, a provincial legislative assembly or a territorial council and must have resided in the province or territory for at least five years. Also consultation among political party leaders would be a prerequisite to the selection of members.

and no person is eligible to be selected to be a member of the House of the Federation from any territory of Canada unless he or she has been ordinarily resident within that territory for an aggregate period of at least five years during the ten years immediately preceding the making of such selection, and except following consultation on his or her selection by the Commissioner of that territory with each of the members of the council thereof.

Nomination  
list; criteria for  
nomination and  
selection

(2) The selection at any particular time, by the appropriate body for that purpose, of any member or members of the House of the Federation from any province shall be made on the basis of a nomination list, which shall be presented to and acted upon by that body in such manner as may be prescribed or authorized by the law of the applicable jurisdiction in the case of that body, or otherwise in accordance with the rules of that body, but the nomination of persons for selection on the basis of any such nomination list, and the selection of any person or persons from among those nominated whose names are listed therein, shall be so conducted as to ensure, to the greatest extent possible, that the ultimately resulting membership within the House of the Federation of its members selected from that province, including those who are to be selected at that time, fairly reflects,

(a) in the case of those members from that province who are to be selected by the House of Commons, the political preferences of the electors of that province voting on the occasion of the most recent general election of members of that House, and

(b) in the case of those members from that province who are to be selected by the legislative assembly of that province, the political preferences of the electors of that province voting on the occasion of the most recent general election of members of the legislative assembly,

expressed in each case respectively in accordance with the shares in which the total number of votes cast by the electors of that province on that occasion for candidates of declared party affiliations were cast for candidates of each such affiliation respectively.

(2) The selection of members would be based on a nomination list. Selection from the list would be so conducted as to ensure, in the case of members selected federally, that the members reflect the political preferences of voters at the last federal general election and, in the case of members selected provincially, that the members reflect the political preferences of voters at the last provincial general election. In each case, the political preferences of voters would be determined on the basis of the total number of votes cast for each political party in the election.

Residence at  
seat of  
government

(3) For the purposes of subsection (1), a person shall be considered to have been ordinarily resident within any province or territory during any particular period, if he or she resided at or in the vicinity of the seat of the government of Canada during that period while a member of one of the Houses of the Parliament of Canada selected from or elected or appointed for that province or territory.

Matters to be  
provided for or  
prescribed by  
Parliament

65. (1) Subject to this Act, the Parliament of Canada may provide for or prescribe the qualifications and disqualifications of persons to be selected or to sit or vote as members of the House of the Federation, the oaths to be made or subscribed by such members, the election of a Speaker of the House of the Federation originally and on any vacancy, the powers and duties of the Speaker, the selection of and the powers and duties of deputies of the Speaker, and the quorum of and mode of voting in the House of the Federation, except that any such provision made for the election of a Speaker of that House originally or on any vacancy shall be subject to the requirement that the Speaker shall be elected from among either the ranks of its members selected by the House of Commons or the ranks of its members selected by other appropriate bodies for that purpose and, after the first election of a Speaker, from among its members not within the ranks of those of the immediately preceding incumbent of that office.

Idem

(2) Subject to this Act, the Parliament of Canada may prescribe rules for determining, in any case of doubt, the number, if any, of members of the House of the Federation of any declared party affiliation that shall, for the purposes of subsection 64(2), be considered to be the number that most closely reflects the political preferences of the electors voting on the occasion of any election, and any rules so prescribed for that purpose shall apply equally to any selection of members of that House that is to be made by the House of Commons, as to any such selection to be made by the legislative assembly of any province.

**(3) Residence at Ottawa by reason of membership in one of the Houses of Parliament would be deemed to be residence in a province for purposes of determining the eligibility of a person to be selected as a member.**

**65. Parliament would be empowered to enact subsidiary legislation providing for additional matters in respect of the new House not covered by the Bill. (See the present ss. 34 to 36 and s. 75 of the Bill.)**

Origination of  
Bills in House  
of the  
Federation

**66.** Bills proposed to Parliament, other than Bills for appropriating any part of the public revenue or for imposing any tax or impost, may originate in the House of the Federation equally as in the House of Commons.

Assent to Bills  
where not  
approved by  
House of the  
Federation

**67.** Where any Bill that has been passed by the House of Commons and presented to the House of the Federation

(a) has been refused passage by the House of the Federation or has been refused consideration at any particular stage required for its passage by the House of the Federation, and not less than sixty days nor more than one hundred and twenty days have elapsed since such refusal, without any motion to reintroduce the Bill in an amended form in the House of Commons having been agreed to by that House,

(b) has not been finally dealt with by the House of the Federation, and not less than sixty days nor more than one hundred and eighty days have elapsed, of which at least forty-five days were days during which Parliament was sitting in the session in which the Bill was presented to the House of the Federation, since the day the Bill was presented to it, or

(c) has been amended by the House of the Federation, and not less than sixty days nor more than one hundred and eighty days have elapsed, of which at least forty-five days were days during which Parliament was sitting in the session in which the Bill was presented to the House of the Federation, since the day the House of Commons refused to concur in some or all of the amendments made by the House of the Federation following the return of the Bill to the House of Commons for its concurrence therein, and without any compromise on the amendment or amendments so refused concurrence having been agreed upon in consultations between the duly appointed representatives of the two Houses,

**66.** The new House, like the present Senate, would not be able to originate money Bills. (See the present s. 53 and also s. 76 of the Bill.)

**67.** This section would provide new rules as to the effect of a refusal or failure of the House of the Federation to approve a House of Commons' Bill and, in so doing, emphasizes the supremacy of the House of Commons. A Bill passed by the House of Commons could, with certain limitations, be presented to the Governor General for assent where the House of the Federation refuses to pass it, fails to deal with it or makes amendments to it with which the House of Commons does not agree. Such action could only be taken after a period of time has elapsed and during a limited period thereafter.

the Bill, in the form in which it was presented to the House of the Federation, but with such amendments made by the House of the Federation as may have been concurred in by the House of Commons in the case of a Bill to which paragraph (c) applies, may thereupon be presented to the Governor General of Canada or his or her deputy for assent in the name of the Governor General, whether or not Parliament is then sitting, and when so assented to shall have the same force and effect in all respects as if passed in that form by the House of the Federation, but there shall be a notation made in all copies thereof as printed and published, to the effect that it was assented to under the provisions of this section.

Assent to certain urgent Bills where delay in enactment likely to be detrimental

68. (1) Where, by the adoption of a motion under this section with respect to any Bill, notice of which motion was given by a Minister of the Crown in the House of Commons at least seven days after the day the Bill was presented to the House of the Federation following its passage by the House of Commons, the House of Commons has agreed, by a vote of at least two-thirds of its members voting on the motion, that

(a) the Bill would not, if it were a law of Canada, have an obvious and significant impact on relations between the federal authority in and for Canada and a provincial authority, or between any of their respective institutions, and

(b) its enactment as a law of Canada is of such urgency that any additional delay therein that could be occasioned by compliance with the requirements of section 67 respecting the presentation of the Bill for assent pursuant to that section, and any delay therein that there is reason to believe is likely to occur if the motion is not adopted, would be detrimental to the interests of Canada or of the public in any part of Canada,

notwithstanding anything in section 67, the Bill may, at any time following the adoption of the motion but not later than the end of the session of Parliament in which it was adopted, be presented for assent pursuant to section 67 without further compliance with the requirements of that section.

Exception

(2) This section does not apply with respect to a Bill that is a measure of, or a measure containing provisions of, special linguistic significance within the meaning of section 69.

68. This section would give a broader power to the House of Commons to present a Bill directly to the Governor General for assent where the House of the Federation may be delaying its passage. The power would apply only in the case of urgent Bills and would not apply in the case of Bills having a significant federal-provincial impact or Bills of special linguistic significance.

Measures of  
special  
linguistic  
significance

69. (1) For the purposes of this section, a resolution, address or Bill (in this section called a "measure") is a measure of special linguistic significance if in its substance it is a measure in relation to the status or use of the English and French languages or either of them, or a measure in relation to a right or privilege acquired or enjoyed or proposed to be acquired and enjoyed with respect to either of those languages, and any provisions contained in a measure are provisions of special linguistic significance if in their substance they are provisions in relation to any matter described in this subsection.

Requirement  
for approval

(2) No measure of special linguistic significance shall be adopted or passed by the House of the Federation except by a vote of both

- (a) a majority of its English-speaking members voting thereon, and
- (b) a majority of its French-speaking members voting thereon.

Idem

(3) No provisions of special linguistic significance contained in any measure being considered by the House of the Federation or any committee thereof shall be approved by the House of the Federation or by any such committee, as the case may be, at any particular stage of the consideration of that measure before the final stage required for its adoption or passage by the House of the Federation, except by a vote of both

- (a) a majority of the English-speaking members of that House or committee, as the case may be, voting thereon, and
- (b) a majority of the French-speaking members of that House or committee, as the case may be, voting thereon.

Consideration  
at committee  
stage

(4) Where a measure containing provisions of special linguistic significance is to be considered at any particular stage by a committee of the House of the Federation, other than of the whole House, the committee to consider the measure shall be so established, in the absence of special circumstances rendering it impracticable so to do, as to reflect in its membership no smaller proportion of French-speaking members to English-speaking members thereof than the proportion of French-speaking members to English-speaking members of the House of the Federation.

69. This section would give to the House of the Federation additional powers in respect of measures (Bills, etc.) or provisions of special linguistic significance, as defined in subsections (1) and (9). Such a measure or provision would only be passed by the House when approved by a majority of English-speaking and a majority of French-speaking members. Special procedural rules, relating to consideration at the committee stage and at the final stage of adoption of a Bill containing a provision of special linguistic significance, would apply. The House would also examine and report on annual reports of special linguistic significance that are laid before Parliament. The rules relating to the supremacy of the House of Commons that would enable matters not approved by the House of the Federation to receive assent in certain cases (ss. 67 and 68) would not apply and it would be necessary to follow a more strict procedure to obtain the assent of the Governor General for such measures or provisions.

Final stage

(5) Where any provisions of special linguistic significance have been approved as provided in subsection (3) at any particular stage in the consideration of the measure in which they are contained, it shall not be open to the House of the Federation at the final stage required for the adoption or passage of that measure, notwithstanding that that House may refuse to adopt or pass the measure at that stage, to amend or otherwise alter those provisions except by the members of that House voting thereon as on a measure of special linguistic significance.

Reports referred to House of the Federation

(6) Any annual or other report that is required by law to be laid before Parliament, to the extent that it relates to any matter described in subsection (1), shall stand referred to the House of the Federation for examination and for such report thereon as that House sees fit.

Application of section 67 in case of measures, etc., of special linguistic significance

(7) Notwithstanding anything in section 67, where during any period of time limited by that section a Bill that has been passed by the House of Commons and presented to the House of the Federation in any session of Parliament might otherwise be presented for assent pursuant to section 67 in such form as is specified in that section, if that Bill is a measure of, or a measure containing provisions of, special linguistic significance it shall not be presented for assent pursuant to that section during that period, but if after the expiration of that period, in that or the next following session of Parliament, that Bill or a Bill in the same form except for minor changes not affecting its substance is again presented to the House of Commons and subsequently passed by that House by a vote of at least two-thirds of its members voting thereon, such Bill may thereupon be presented for assent pursuant to section 67 without further compliance with the requirements of that section.

Qualifications of members for voting purposes

(8) For the purposes of this section a member of the House of the Federation shall be considered to be a French-speaking member thereof if his or her primarily spoken language, or the language first

learned in childhood and still understood by him or her, is French, and such member has notified the Speaker of the House of the Federation in writing, not later than the end of the first thirty sitting days of that House next following his or her selection as a member thereof, that he or she considers himself or herself to be a French-speaking member thereof, and a member of that House shall be considered to be an English-speaking member thereof unless, in accordance with this subsection, he or she is considered to be a French-speaking member thereof, or unless such member has notified the Speaker thereof in writing, not later than the end of the thirty days herein referred to, that he or she does not consider himself or herself to be an English-speaking member thereof; in the event of any dispute arising as to whether a member of the House of the Federation is or is not to be considered to be a French-speaking member or an English-speaking member of that House, the matter shall be decided by the Speaker of that House, whose decision thereon shall be conclusive.

When measures to be characterized as measures of, or containing provisions of, special linguistic significance

(9) The following measures shall be conclusively deemed to be measures of, or containing provisions of, special linguistic significance:

- (a) any measure that is indicated, in the message of the Governor General of Canada recommending its purpose to the House of Commons, to be such a measure or to contain such provisions;
- (b) any measure that has been adopted or passed by the House of Commons and, before the day of its presentation to the House of the Federation, has been certified by the Speaker of the House of Commons or a duly authorized deputy of such Speaker, or that not later than the third sitting day of the House of the Federation next following the day of its introduction in or presentation to the House of the Federation, is certified by the Speaker of the House of the Federation or a duly authorized deputy of such Speaker, to be such a measure or to contain such provisions; and

(c) any other measure that, following a request for a determination of the matter made by any fifteen or more members of the House of the Federation in accordance with the rules of that House not later than the seventh sitting day of that House next following the day of the introduction in or presentation to that House of that measure, is determined by the Speaker of the House of the Federation to be such a measure or to contain such provisions;

and it shall be for determination in such manner as may be prescribed by the rules of the House of the Federation, whether any measure not coming within any description thereof contained in paragraph (a), (b) or (c) shall be considered to be a measure of, or containing provisions of, special linguistic significance.

Powers respecting appointments to institutions designated by Parliament

**70.** (1) No appointment of a person to be the chairman, president or other chief executive officer of any judicial, quasi-judicial or administrative body or Crown corporation established by or pursuant to an Act of the Parliament of Canada (other than a court constituted for the better administration of the laws of Canada) that has been designated by the Parliament of Canada to be an institution to which this section applies, shall have effect until such time as the appointment of that person has been affirmed by the House of the Federation.

Application of section 107 and of affirmation procedure therein

(2) Nothing in this section affects the operation of the provisions of section 107 respecting the affirmation by the House of the Federation of nominations for appointment to the Supreme Court of Canada, and the provisions of that section apply to and in respect of the affirmation of appointments pursuant to this section, with such modifications as the circumstances require and with the substitution of the President of the Council of State of Canada for the Attorney General of Canada and the substitution of thirty days for fourteen days and of forty-five days for twenty-one days.

**70.** This section would give to the House of the Federation a power that is new to the parliamentary process in Canada—the power to affirm or veto senior appointments to institutions to be designated by Parliament. The procedure in the House for such affirmations would be the same as for appointments to the Supreme Court except that a longer period for taking action would be allowed in the case of affirmations under this section and a different Minister would be responsible for notifying the House. (See also s. 107.)

**71-78.** These sections would, except as otherwise noted, reconstitute the House of Commons as it is at present. They would have effect when the Bill becomes law. (See the Introduction hereto, category 1(1).)

## REGINA PREMIERS' CONFERENCE (1978)

The provinces regard the House of the Federation as proposed, as unworkable. (Extract from Communiqué)

## EXTRACT OF LETTER FROM THE PRIME MINISTER OF CANADA TO THE PREMIER OF SASKATCHEWAN DATED SEPTEMBER 13, 1978

...So far as the Senate is concerned, while the government and its advisers have no doubt as to the capacity of Parliament to legislate to the effect that is involved in Bill C-60, it seems undesirable to allow allegations of uncertainty in this regard to continue to impede concentration on the substance of the question of a second Chamber in a revised Constitution. We are also conscious of the doubt the Premiers expressed in this regard in the Regina communiqué. My colleagues and I have accordingly decided to make a reference to the Supreme Court to clarify Parliament's jurisdiction to make changes affecting the Senate or to legislate for its replacement by a different second Chamber. Making the reference does not, of course, mean any lessening in the desire that I have expressed to see constitutional change effected with the full agreement of the provinces. Indeed, the reference should in no way preclude our exchanging views, in the meantime, on the best role and structure for the Upper Chamber of Parliament in a renewed Federation. Our making the reference is simply a matter of wishing to have certainty about the capacity of Parliament to act if, after full discussion with the provinces, it is found that the only way in which action can be achieved is by Parliament taking its own responsibilities, within its constitutional powers, in what it considers the national interest to require.

## LAMONTAGNE/MACGUIGAN REPORT (1978)

Most of our witnesses have expressed views on the subject of a second chamber. Indeed, it is probably the topic on which the widest range of opinion has been manifested. Four major proposals have been advanced: an elected Senate, a House of the Federation as provided in Bill C-60, a House of the Provinces similar to the Bundesrat in West Germany, and modified versions of the present Senate. There has been no agreement among witnesses on an appropriate second chamber.

The Committee is not in a position at this stage to make specific recommendations on these most important proposals respecting the Courts and Parliament. The overwhelming body of witnesses and a substantial majority of the members of the Committee are prepared to recommend, however, that the Parliament of Canada should have a second Chamber and that the Senate as now constituted should be reformed.

## CONSTITUTIONAL CONFERENCE (1978)

NOTE: The source of each extract is shown at the end in brackets.

### Conclusions

Senate reform, said Henri Bourassa, "comes periodically like other forms of epidemics and current fevers." The recent spate of proposals concerning the Senate makes Bourassa's description apt. Certainly 1978 has been a "Senate epidemic" year. However, unlike other epidemics, this one will not likely go away. For a number of years now the Government of British Columbia has been advocating reforms in many of our most important national institutions. Reform of the Senate has always been a cornerstone of our proposals. Recent proposals, from a variety of sources, concerning the Senate indicate that our attention has not been misfocussed and that many other individuals and governments are beginning to study this area of potential constitutional reform.

In making our proposals for Senate reform British Columbia adheres to three guiding principles and makes specific proposals consistent with those principles. First, the Senate must be a *legitimate* national institution—in the eyes of the public and in the eyes of provincial and federal governments. Secondly, the primary purpose of the Senate must be the representation of provincial or regional interests in the national law-making process. Thirdly, the Senate must equalize, to a greater extent than the Commons, regional participation in the national law-making process.

Against this backdrop of general principles the specific reform proposals which British Columbia advocates are as follows:

- (1) The Senate should not be abolished. It should be substantially altered.
- (2) The primary purpose of the Senate should be to institutionalize provincial or regional participation in the national law-making process.
- (3) The secondary purpose of the Senate should be to review legislation enacted by the House of Commons.
- (4) There should be *equal regional representation* in the Senate from each of the five regions of Canada: Atlantic, Quebec, Ontario, Prairie, and Pacific.
- (5) Senate members should be appointed by and removed by the provincial governments. The leading Senator from each province would be a provincial Cabinet Minister. There should not be any restrictions on the provincial governments in relation to the appointment of all other Senators.
- (6) The powers of the Senate should be divided into two categories. In relation to a carefully limited list of subject matters which are also of crucial importance to the provinces (Category A) the Senate would exercise an absolute veto. These would include:
  - (a) Appointments to the Supreme Court of Canada.
  - (b) Appointments to major Crown agencies and federal commissions and administrative tribunals such as the Bank of Canada, CBC, CTC and CRTC.
  - (c) Amendments to the Constitution in respect of some of those subject matters currently covered by section 91 (1) of the *B.N.A. Act*.

- (d) Amendments to the Constitution in relation to all those subject matters not covered by the present section 92 (1) and an adjusted section 91 (1) of the *B.N.A. Act*.
- (e) The creation of federal laws to be administered by the provinces.
- (f) The ratification of a declaration by the House of Commons pursuant to section 92 (10) (c) of the *B.N.A. Act*.
- (g) Approval of the use of the federal government's spending power in areas of provincial jurisdiction.
- (7) The Senate would exercise a suspensive veto in respect of all other subject matters within the jurisdiction of the federal government (Category B). This veto could be over-ridden by the Commons passing the same law again at its next session or after three months have elapsed, whichever comes first.
- (8) The defeat in the Senate of a government bill would not undermine the authority of the governing party in the House of Commons.
- (9) In relation to Category A matters, the Senator who is a provincial Cabinet Minister would cast a bloc-vote for that province's Senators.
- (10) In relation to Category B matters, all Senators would cast their vote on their own behalf as free agents and not under instruction from provincial governments.

(Pages 33 and 34 from "British Columbia's Constitutional Proposals, Paper No. 3 - Reform of the Canadian Senate." For a more complete analysis see full text available from the CICS.)

. . . I AM AWARE OF THE VARIOUS PROPOSALS WHICH HAVE BEEN MADE INVOLVING THE ABOLITION OF THE SENATE AND ITS REPLACEMENT WITH AN UPPER HOUSE REPRESENTING PROVINCIAL GOVERNMENTS OR REGIONAL INTERESTS. RECOMMENDATIONS ALONG THESE LINES HAVE BEEN MADE BY THE ONTARIO ADVISORY COMMITTEE ON CONFEDERATION, THE CANADIAN BAR ASSOCIATION, THE GOVERNMENT OF BRITISH COLUMBIA AND THE GOVERNMENT OF CANADA.

WITH REGARD TO THESE PROPOSALS, I REMAIN OPEN TO FURTHER DISCUSSION. SOME HAVE CONSIDERABLY MORE MERIT THAN OTHERS. I HAVE SERIOUS DOUBTS IN PARTICULAR ABOUT THE MERIT OF THE HOUSE OF THE FEDERATION, BUT THEN THAT IS A NATURAL BIAS ON MY PART. TO THE EXTENT THAT ANY CREATIVE IDEAS DEMONSTRABLY SERVE TO IMPROVE RELATIONS BETWEEN THE FEDERAL AND PROVINCIAL GOVERNMENTS IN CANADA, I THINK THAT THEY DESERVE OUR FURTHER CONSIDERATION. I WOULD WANT, HOWEVER, TO BE BETTER ASSURED THAN I AM NOW THAT THEY WILL RESULT IN PRACTICAL, WORKABLE POLITICAL INSTITUTIONS.

. . .

(Pages 7 and 8 from Ontario paper "Federal-Provincial Relations")

. . .

THERE ARE NATIONAL OBJECTIVES AND THERE ARE NATIONAL PROBLEMS WHICH CAN ONLY BE EFFECTIVELY DEALT WITH BY NATIONAL INSTITUTIONS. IT IS INARGUABLE THAT EACH AND EVERY CANADIAN, IN WHATEVER CANADIAN PROVINCE, HAS NATIONAL INTERESTS, NATIONAL CONCERNS AND A SENSE OF NATIONAL CITIZENSHIP WHICH ONLY OUR FEDERAL INSTITUTIONS CAN SATISFY.

IT FOLLOWS, THEN, THAT I, FOR ONE, AM CONCERNED BY THE WEAKENING OF OUR NATIONAL INSTITUTIONS BY THE EMPHASIS UPON INCREASING REGIONAL FACTIONALISM WHICH IS A COMMON THREAD RUNNING THROUGH THE FEDERAL AND SOME PROVINCIAL PROPOSALS RELATING TO THE SUPREME COURT OF CANADA AND THE HOUSE OF THE FEDERATION.

. . .

I BELIEVE STRONGLY THAT NATIONAL ISSUES MUST BE THE RESPONSIBILITY OF STRONG NATIONAL INSTITUTIONS. SUCH WILL ULTIMATELY BEST SERVE THE INTERESTS OF EVERY PROVINCE. IF, HOWEVER, OUR NATIONAL INSTITUTIONS ARE TO BECOME MERELY REPRESENTATIVE OF REGIONAL GROUPS AND FACTIONS AND ARE, INDEED, MANDATED TO DO SO, THEN THEY ARE ONLY TOO LIKELY TO BE DOMINATED AND REPRESENTATIVE OF THE LARGER REGIONS OF CANADA TO THE ULTIMATE DETRIMENT OF PROVINCES SUCH AS NEW BRUNSWICK.

. . .

(Pages 5 and 6 from New Brunswick paper "Statement by the Honourable Richard Hatfield")

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SENATE:

We would support a proposal for direct appointment of provincial representatives to the Second Chamber thereby providing for the expression of provincial and regional points of view in that Second Chamber.

. . .  
(Page 4 from Nova Scotia paper "Address by the Honourable John M. Buchanan, Q.C.")

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. . .  
If Canada is to retain an Upper House, Prince Edward Island would not be adverse to modifying the Senate in order to overcome some of the criticisms that have been identified during its past century of service.

. . .  
(Page 11 from Prince Edward Island's paper "Statement by the Honourable W. Bennett Campbell")

PROVINCIAL CONSTITUTIONS



IX. PROVINCIAL CONSTITUTIONS

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B.N.A. ACT.

## V.—PROVINCIAL CONSTITUTIONS.

*Executive Power.*

**58.** For each Province there shall be an Officer, styled the Lieutenant Governor, appointed by the Governor General in Council by Instrument under the Great Seal of Canada. Appointment of Lieutenant Governors of Provinces.

**59.** A Lieutenant Governor shall hold Office during the Pleasure of the Governor General; but any Lieutenant Governor appointed after the Commencement of the First Session of the Parliament of Canada shall not be removeable within Five Years from his Appointment, except for Cause assigned, which shall be communicated to him in Writing within One Month after the Order for his Removal is made, and shall be communicated by Message to the Senate and to the House of Commons within One Week thereafter if the Parliament is then sitting, and if not then within One Week after the Commencement of the next Session of the Parliament. Tenure of Office of Lieutenant Governor.

**60.** The Salaries of the Lieutenant Governors shall be fixed and provided by the Parliament of Canada. (25) Salaries of Lieutenant Governors.

**61.** Every Lieutenant Governor shall, before assuming the Duties of his Office, make and subscribe before the Governor General or some Person authorized by him Oaths of Allegiance and Office similar to those taken by the Governor General. Oaths, etc., of Lieutenant Governor.

**62.** The Provisions of this Act referring to the Lieutenant Governor extend and apply to the Lieutenant Governor for the Time being of each Province, or other the Chief Executive Officer or Administrator for the Time being carrying on the Government of the Province, by whatever Title he is designated. Application of provisions referring to Lieutenant Governor.

Appointment of Executive Officers for Ontario and Quebec.

**63.** The Executive Council of Ontario and of Quebec shall be composed of such Persons as the Lieutenant Governor from Time to Time thinks fit; and in the first instance of the following Officers, namely,—the Attorney General, the Secretary and Registrar of the Province, the Treasurer of the Province, the Commissioner of Crown Lands, and the Commissioner of Agriculture and Public Works, with in Quebec the Speaker of the Legislative Council and the Solicitor General. (26)

Executive Government of Nova Scotia and New Brunswick.

**64.** The Constitution of the Executive Authority in each of the Provinces of Nova Scotia and New Brunswick shall, subject to the Provisions of this Act, continue as it exists at the Union until altered under the Authority of this Act. (26A)

Powers to be exercised by Lieutenant Governor of Ontario or Quebec with Advice, or alone.

**65.** All Powers, Authorities, and Functions which under any Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of Upper Canada, Lower Canada, or Canada, were or are before or at the Union vested in or exerciseable by the respective Governors or Lieutenant Governors of those Provinces, with the Advice or with the Advice and Consent of the respective Executive Councils thereof, or in conjunction with those Councils, or with any Number of Members thereof, or by those Governors or Lieutenant Governors individually, shall, as far as the same are capable of being exercised after the Union in relation to the Government of Ontario and Quebec respectively, be vested in and shall or may be exercised by the Lieutenant Governor of Ontario and Quebec respectively, with the Advice or with the Advice and Consent of or in conjunction with the respective Executive Councils, or any Members thereof, or by the Lieutenant Governor individually, as the Case requires, subject nevertheless (except with respect to such as exist under Acts of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland,) to be abolished or altered by the respective Legislatures of Ontario and Quebec. (27)

**66.** The Provisions of this Act referring to the Lieutenant Governor in Council shall be construed as referring to the Lieutenant Governor of the Province acting by and with the Advice of the Executive Council thereof.

Application of Provisions referring to Lieutenant Governor in Council.

**67.** The Governor General in Council may from Time to Time appoint an Administrator to execute the Office and Functions of Lieutenant Governor during his Absence, Illness, or other Inability.

Administration in Absence, etc., of Lieutenant Governor.

**68.** Unless and until the Executive Government of any Province otherwise directs with respect to that Province, the Seats of Government of the Provinces shall be as follows, namely,—of Ontario, the City of Toronto; of Quebec, the City of Quebec; of Nova Scotia, the City of Halifax; and of New Brunswick, the City of Fredericton.

Seats of Provincial Governments.

### *Legislative Power.*

#### **1.—ONTARIO.**

**69.** There shall be a Legislature for Ontario consisting of the Lieutenant Governor and of One House, styled the Legislative Assembly of Ontario.

Legislature for Ontario.

**70.** The Legislative Assembly of Ontario shall be composed of Eighty-two Members, to be elected to represent the Eighty-two Electoral Districts set forth in the First Schedule to this Act. (28)

Electoral districts.

## 2.—QUEBEC.

**71.** There shall be a Legislature for Quebec consisting of the Lieutenant Governor and of Two Houses, styled the Legislative Council of Quebec and the Legislative Assembly of Quebec. Legislature for Quebec.

**72.** The Legislative Council of Quebec shall be composed of Twenty-four Members, to be appointed by the Lieutenant Governor, in the Queen's Name, by Instrument under the Great Seal of Quebec, One being appointed to represent each of the Twenty-four Electoral Divisions of Lower Canada in this Act referred to, and each holding Office for the Term of his Life, unless the Legislature of Quebec otherwise provides under the Provisions of this Act. (29) Constitution of Legislative Council.

Qualification of Legislative Councillors.

**73.** The Qualifications of the Legislative Councillors of Quebec shall be the same as those of the Senators for Quebec. (30)

Resignation, Disqualification, etc.

**74.** The Place of a Legislative Councillor of Quebec shall become vacant in the Cases, *mutatis mutandis*, in which the Place of Senator becomes vacant.

Vacancies.

**75.** When a Vacancy happens in the Legislative Council of Quebec by Resignation, Death, or otherwise, the Lieutenant Governor, in the Queen's Name, by Instrument under the Great Seal of Quebec, shall appoint a fit and qualified Person to fill the Vacancy.

Questions as to Vacancies, etc.

**76.** If any Question arises respecting the Qualification of a Legislative Councillor of Quebec, or a Vacancy in the Legislative Council of Quebec, the same shall be heard and determined by the Legislative Council.

Speaker of Legislative Council.

**77.** The Lieutenant Governor may from Time to Time, by Instrument under the Great Seal of Quebec, appoint a Member of the Legislative Council of Quebec to be Speaker thereof, and may remove him and appoint another in his Stead. (31)

Quorum of Legislative Council.

**78.** Until the Legislature of Quebec otherwise provides, the Presence of at least Ten Members of the Legislative Council, including the Speaker, shall be necessary to constitute a Meeting for the Exercise of its Powers.

Voting in Legislative Council.

**79.** Questions arising in the Legislative Council of Quebec shall be decided by a Majority of Voices, and the Speaker shall in all Cases have a Vote, and when the Voices are equal the Decision shall be deemed to be in the Negative.

**80.** The Legislative Assembly of Quebec shall be composed of Sixty-five Members, to be elected to represent the Sixty-five Electoral Divisions or Districts of Lower Canada in this Act referred to, subject to Alteration thereof by the Legislature of Quebec: Provided that it shall not be lawful to present to the Lieutenant Governor of Quebec for Assent any Bill for altering the Limits of any of the Electoral Divisions or Districts mentioned in the Second Schedule to this Act, unless the Second and Third Readings of such Bill have been passed in the Legislative Assembly with the Concurrence of the Majority of the Members representing all those Electoral Divisions or Districts, and the Assent shall not be given to such Bill unless an Address has been presented by the Legislative Assembly to the Lieutenant Governor stating that it has been so passed. (32)

Continuance of  
Legislative  
Assembly of  
Quebec.

3.—ONTARIO AND QUEBEC.

**81.** Repealed. (33)

Summoning of  
Legislative  
Assemblies.

**82.** The Lieutenant Governor of Ontario and of Quebec shall from Time to Time, in the Queen's Name, by Instrument under the Great Seal of the Province, summon and call together the Legislative Assembly of the Province.

Restriction on  
election of  
Holders of  
offices.

**83.** Until the Legislature of Ontario or of Quebec otherwise provides, a Person accepting or holding in Ontario or in Quebec any Office, Commission, or Employment, permanent or temporary, at the Nomination of the Lieutenant Governor, to which an annual Salary, or any Fee, Allowance, Emolument, or Profit of any Kind or Amount whatever from the Province is attached, shall not be eligible as a Member of the Legislative Assembly of the respective Province, nor shall he sit or vote as such; but nothing in this Section shall make ineligible any Person being a Member of the Executive Council of the respective Province, or holding any of the following Offices, that is to say, the Offices of Attorney General, Secretary and Registrar of the Province, Treasurer of the Province, Commissioner of Crown Lands, and Commissioner of Agriculture and Public Works, and in Quebec Solicitor General, or shall disqualify him to sit or vote in the House for which he is elected, provided he is elected while holding such Office. (34)

Continuance of  
existing  
Election Laws.

**84.** Until the Legislatures of Ontario and Quebec respectively otherwise provide, all Laws which at the Union are in force in those Provinces respectively, relative to the following Matters, or any of them, namely,—the Qualifications and Disqualifications of Persons to be elected or to sit or vote as Members of the Assembly of Canada, the Qualifications or Disqualifications of Voters, the Oaths to be taken by Voters, the Returning Officers, their Powers and Duties, the Proceedings at Elections, the Periods during which such Elections may be continued, and the Trial of controverted Elections and the Proceedings incident thereto, the vacating of the Seats of Members and the issuing and execution of new Writs in case of Seats vacated otherwise than by Dissolution,—shall respectively apply to Elections of Members to serve in the respective Legislative Assemblies of Ontario and Quebec.

Provided that, until the Legislature of Ontario otherwise provides, at any Election for a Member of the Legislative Assembly of Ontario for the District of Algoma, in addition to Persons qualified by the Law of the Province of Canada to vote, every male British Subject, aged Twenty-one Years or upwards, being a Householder, shall have a vote. (35)

85. Every Legislative Assembly of Ontario and every Legislative Assembly of Quebec shall continue for Four Years from the Day of the Return of the Writs for choosing the same (subject nevertheless to either the Legislative Assembly of Ontario or the Legislative Assembly of Quebec being sooner dissolved by the Lieutenant Governor of the Province), and no longer. (36)

Duration of  
Legislative  
Assemblies.

86. There shall be a Session of the Legislature of Ontario and of that of Quebec once at least in every Year, so that Twelve Months shall not intervene between the last Sitting of the Legislature in each Province in one Session and its first Sitting in the next Session.

Yearly Session  
of Legislature.

87. The following Provisions of this Act respecting the House of Commons of Canada shall extend and apply to the Legislative Assemblies of Ontario and Quebec, that is to say,—the Provisions relating to the Election of a Speaker originally and on Vacancies, the Duties of the Speaker, the Absence of the Speaker, the Quorum, and the Mode of voting, as if those Provisions were here re-enacted and made applicable in Terms to each such Legislative Assembly.

Speaker,  
Quorum, etc.

#### 4.—NOVA SCOTIA AND NEW BRUNSWICK.

88. The Constitution of the Legislature of each of the Provinces of Nova Scotia and New Brunswick shall, subject to the Provisions of this Act, continue as it exists at the Union until altered under the Authority of this Act. (37)

Constitutions of  
Legislatures of  
Nova Scotia  
and New  
Brunswick.

89. Repealed. (38)

#### 6.—THE FOUR PROVINCES.

Application to  
Legislatures of  
Provinces  
respecting  
Money Votes,  
etc.

90. The following Provisions of this Act respecting the Parliament of Canada, namely,—the Provisions relating to Appropriation and Tax Bills, the Recommendation of Money Votes, the Assent to Bills, the Disallowance of Acts, and the Signification of Pleasure on Bills reserved,—shall extend and apply to the Legislatures of the several Provinces as if those Provisions were here re-enacted and made applicable in Terms to the respective Provinces and the Legislatures thereof, with the Substitution of the Lieutenant Governor of the Province for the Governor General, of the Governor General for the Queen and for a Secretary of State, of One Year for Two Years, and of the Province for Canada.

VICTORIA CHARTER (1971)

No proposal

SPECIAL JOINT COMMITTEE ON THE CONSTITUTION (1972)

No proposal

DRAFT PROCLAMATION (1976)

No proposal

PREMIERS' CONFERENCES (1976)

No proposal

DRAFT RESOLUTION (1977)

No proposal

BILL C-60 (1978)

VII PROVINCIAL AUTHORITIES

*(a) The Lieutenant Governor*

Office of  
Lieutenant  
Governor

\*79. For each province, there shall be an officer who shall be styled the Lieutenant Governor of the province.

79-90. These designated provisions provide for the Lieutenant Governors and executive councils of the provinces and for provincial capitals and provincial legislative authority. (For coming into effect, see s. 125 and the Introduction hereto, category 5. See also s. 131(4).)

79. This section, which would reconstitute the office of Lieutenant Governor for each province, is, in substance, part of the present s. 58, modified.

Appointment of  
Lieutenant  
Governor

**\*80.** (1) Each Lieutenant Governor of a province shall be appointed by the Governor General in Council by instrument under the Great Seal of Canada, following consultation on his or her appointment with the executive council of that province.

Tenure of office  
and removal

**\*80.** (2) Each Lieutenant Governor of a province shall hold office during the pleasure of the Governor General, but shall not be removable from that office within five years from his or her appointment except for cause assigned, which shall be communicated to him or her within thirty days after the order for his or her removal is made, and shall be communicated by message to both Houses of the Parliament of Canada and to the executive council of that province forthwith thereafter.

Salaries and  
pensions

**\*81.** The salaries and pensions of the Lieutenant Governors shall be fixed and provided by the Parliament of Canada.

Oaths to be  
made and  
subscribed

**\*82.** Every Lieutenant Governor of a province shall, before assuming the duties of his or her office, make and subscribe before a person authorized by law to receive the same, oaths of allegiance and office similar to those taken by the Governor General.

Powers,  
authorities and  
functions

**\*83.** All powers, authorities and functions vested in or exercisable by the Lieutenant Governor of a province, with the advice or with the advice and consent of or in conjunction with the executive council of the province, or any member thereof, or by the Lieutenant Governor individually, as the case may be, immediately before the coming into effect of this section, continue to be vested in or exercisable by the Lieutenant Governor, on the advice or by and with the advice of the executive council, or any member thereof, or by the Lieutenant Governor individually, as the case requires, subject to be abolished or altered by the legislature of the province except as regards any such power, authority or function conferred or provided for by this Act or otherwise by the Constitution of Canada.

80. This section, which provides for the appointment and tenure of office of a Lieutenant Governor, is, in substance, part of the present s. 58, modified and the present s. 59, modified.

81. This section would authorize the present salary and pension arrangements (payment provided by Act of Parliament) for Lieutenant Governors. It is the present s. 60, modified. (See also s. 3 of the *Salaries Act* and the *Lieutenant Governors Superannuation Act*.)

82. This requirement for an oath to be taken is the present s. 61 modified as to the person before whom an oath may be made.

83. This section would continue in the Lieutenant Governor of a province the powers at present exercised by the Lieutenant Governor. It is new but derives from the present s. 65 which is an equivalent transitional provision.

Appointment of  
deputies

**\*84. (1)** The Lieutenant Governor of a province is authorized and empowered to appoint from time to time any person or persons, jointly or severally, to be his or her deputy or deputies within any part of the province, and in that capacity to exercise during the pleasure of the Lieutenant Governor such of the powers, authorities and functions of the Lieutenant Governor as the Lieutenant Governor deems it necessary or expedient to assign to such deputy or deputies, but the appointment of such a deputy or deputies shall not affect the exercise by the Lieutenant Governor personally of any such power, authority or function.

**84.** This new provision would place provinces in a position similar to that of the federal authority in respect of the appointment of an administrator and deputies of the Lieutenant Governor. It would end an existing problem by permitting an administrator to serve for a temporary period when a Lieutenant Governor dies. (See the present ss. 62 and 67, and s. 48 of the Bill.)

Provision for  
administrator

**\*(2)** It shall be lawful for the Governor General in Council, at the request of the executive council of a province, to make provision for the appointment of and respecting the office of an administrator to carry on the executive government of the province during the absence or incapacity of the Lieutenant Governor of the province or during the period while any vacancy in the office of Lieutenant Governor thereof remains unfilled.

Application of  
provisions  
referring to  
Lieutenant  
Governor

**\*(3)** The provisions of this Act referring to the Lieutenant Governor of a province extend and apply to the administrator for the time being carrying on the executive government of the province, by whatever title he or she may be designated.

#### *(b) The Executive Council*

Constitution of  
executive  
council

**\*85.** In each province subject as otherwise provided by the constitution of the province, there shall be an executive council thereof, by whatever name the executive council may be styled, to aid and advise in the government of the province, and the persons who are to be members of the executive council shall be chosen and summoned from time to time by the Lieutenant Governor of the province and sworn as executive councillors, and members thereof may be removed from time to time by the Lieutenant Governor.

**85.** This section, which provides for the continuation of the present executive councils of the provinces is new in part but derives from the present ss. 63 and 64 which continue the pre-confederation executive authorities of the original four provinces.

References to  
Lieutenant  
Governor in  
Council

**\*86.** The provisions of this Act referring to the Lieutenant Governor in Council of a province shall be construed as referring to the Lieutenant Governor of the province acting by and with the advice of the executive council of the province.

**86.** This section is the present s. 66 modified.

*(c) Seats of Provincial Governments*

Seats of  
provincial  
governments

**\*87.** Until the legislature of any province otherwise directs with respect to that province, the seats of government of the provinces shall be as follows: of Ontario, the City of Toronto; of Quebec, the City of Quebec; of Nova Scotia, the City of Halifax; of New Brunswick, the City of Fredericton; of Manitoba, the City of Winnipeg; of British Columbia, the City of Victoria; of Prince Edward Island, the City of Charlottetown; of Saskatchewan, the City of Regina; of Alberta, the City of Edmonton; and of Newfoundland, the City of St. John's.

*(d) Provincial Legislative Authority*

Constitution of  
legislature

**\*88.** There shall be a legislature for each province consisting of the Lieutenant Governor of the province and the legislative assembly thereof, by whatever name the legislative assembly may be styled.

Summoning of  
legislative  
assembly

**\*89.** The Lieutenant Governor of each province shall from time to time, by instrument under the Great Seal of the province, summon and call together in the Queen's name the legislative assembly of the province to meet in the legislature thereof.

Laws respecting  
legislative  
assembly to  
continue in  
force until  
altered

**\*90.** Until the legislature of any province otherwise provides, all laws in force in each province with respect to the election of members to the legislative assembly including controverted elections and proceedings with respect thereto, the qualifications and disqualifications of persons to be elected or to sit or vote as members thereof, the oaths to be made or subscribed by such members, the election of a Speaker of the legislative assembly originally and on any vacancy, the powers and duties of the Speaker, the selection of and the powers and duties of deputies of the Speaker, the quorum of and mode of voting in the legislative assembly, appropriation and tax Bills and the recommending of money votes shall continue in force after the coming into effect of this section; and in all other respects, subject to this Act, the constitution of the legislative assembly shall continue as it was at the coming into effect of this section until altered by the legislature under the authority of the Constitution of Canada.

**87.** This section names as provincial capitals the present capitals. It would extend the present s. 68, which applies by its terms only to the original four provinces, to all provinces and would modify it so as to require the legislature, rather than the provincial government, to approve a change of capital.

**88.** This section, which would continue the present provincial legislatures, is new in that it would extend by its terms to all provinces. It derives from the present ss. 69 to 88 which provide for the legislatures of the original four provinces.

**89.** This section provides for the summoning of provincial legislative assemblies. It is the present s. 82 modified to extend to all provinces.

**90.** This section would continue the laws relating to the present provincial legislative assemblies until they are altered by the provincial legislatures. It is new but is adapted from the present ss. 84, 87 and 88.

Designated provisions: approval of additional measures to be taken when agreed

**125.** The enactment of this Act by the Parliament of Canada does not extend to any following provision (in this Part referred to as a "designated provision") set out in Part I of this Act, namely:

- (a) section 31,
- (b) section 33,
- (c) sections 35 to 40,
- (d) sections 79 to 95,
- (e) sections 97 to 99,
- (f) section 120, and
- (g) sections 121 to 123;

and the inclusion in this Act of any designated provision does not constitute an assertion by the Parliament of Canada of authority to enact any such provision; but in order that effect may be given as soon as may be to each such designated provision as part of the Constitution of Canada, it is hereby declared and directed that, on and after the commencement of this Act and by virtue of its enactment by the Parliament of Canada, both Houses of the Parliament of Canada shall be deemed to have approved of resolutions for the amendment of the Constitution of Canada in the form and to the effect of each of those provisions, each of which resolutions may be taken up and dealt with, either severally or in combination with any other or others of them, by action as on a joint address or by proclamation, as the case may be, as and when it or they may lawfully be so taken up and dealt with in accordance with the procedure for such amendment then recognized by accepted usage, if there is then no procedure for that purpose expressly provided for by the Constitution of Canada, or in accordance with the procedure for that purpose expressly so provided for, if there is then such a procedure.

Amendment of designated provisions not precluded

**126.** Nothing in section 125 shall be construed as precluding the amendment of any designated provision, including, but without limiting the generality of that expression, any designated provision set out in sections 91 to 95, before such time as any resolution with respect thereto that is deemed by section 125 to have been approved by both Houses of the Parliament of Canada is taken up and dealt with as provided in that section.

**125.** This section provides for the coming into effect of the designated provisions. (See the Introduction hereto, categories 4 and 5.)

**126.** This section emphasizes the possibility of amendment to any designated section before it is entrenched pursuant to s. 125.

REGINA PREMIERS' CONFERENCE (1978)

No proposal

LAMONTAGNE/MACGUIGAN REPORT (OCTOBER 1978)

No proposal

CONSTITUTIONAL CONFERENCE (1978)

No proposal



DISTRIBUTION OF LEGISLATIVE POWERS



## X. DISTRIBUTION OF LEGISLATIVE POWERS

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## B.N.A. ACT

### VI.—DISTRIBUTION OF LEGISLATIVE POWERS.

#### *Powers of the Parliament.*

Legislative  
Authority of  
Parliament of  
Canada.

91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next herein-after enumerated; that is to say,—

1. The amendment from time to time of the Constitution of Canada, except as regards matters coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the provinces, or as regards rights or privileges by this or any other Constitutional Act granted or secured to the Legislature or the Government of a province, or to any class of persons with respect to schools or as regards the use of the English or the French language or as regards the requirements that there shall be a session of the Parliament of Canada at least once each year, and that no House of Commons shall continue for more than five years from the day of the return of the Writs for choosing the House: provided, however, that a House of Commons may in time of real or apprehended war, invasion or insurrection be continued by the Parliament of Canada if such continuation is not opposed by the votes of more than one-third of the members of such House. (39)

1A. The Public Debt and Property. (40)

2. The Regulation of Trade and Commerce.

2A. Unemployment insurance. (41)

3. The raising of Money by any Mode or System of Taxation.

4. The borrowing of Money on the Public Credit.

5. Postal Service.

6. The Census and Statistics.

7. Militia, Military and Naval Service, and Defence.

8. The fixing of and providing for the Salaries and Allowances of Civil and other Officers of the Government of Canada.

9. Beacons, Buoys. Lighthouses, and Sable Island.

10. Navigation and Shipping.

11. Quarantine and the Establishment and Maintenance of Marine Hospitals.

12. Sea Coast and Inland Fisheries.

13. Ferries between a Province and any British or Foreign Country or between Two Provinces.
14. Currency and Coinage.
15. Banking, Incorporation of Banks, and the Issue of Paper Money.
16. Savings Banks.
17. Weights and Measures.
18. Bills of Exchange and Promissory Notes.
19. Interest.
20. Legal Tender.
21. Bankruptcy and Insolvency.
22. Patents of Invention and Discovery.
23. Copyrights.
24. Indians, and Lands reserved for the Indians.
25. Naturalization and Aliens.
26. Marriage and Divorce.
27. The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.
28. The Establishment, Maintenance, and Management of Penitentiaries.
29. Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

And any Matter coming within any of the Classes of Subjects enumerated in this Section shall not be deemed to come within the Class of Matters of a local or private Nature comprised in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces. (42)

#### *Exclusive Powers of Provincial Legislatures.*

92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subject next herein-after enumerated; that is to say,—

Subjects of  
exclusive  
Provincial  
Legislation.

1. The Amendment from Time to Time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the Office of Lieutenant Governor.
2. Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes.
3. The borrowing of Money on the sole Credit of the Province.
4. The Establishment and Tenure of Provincial Offices and the Appointment and Payment of Provincial Officers.
5. The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon.

6. The Establishment, Maintenance, and Management of Public and Reformatory Prisons in and for the Province.
7. The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province, other than Marine Hospitals.
8. Municipal Institutions in the Province.
9. Shop, Saloon, Tavern, Auctioneer, and other Licences in order to the raising of a Revenue for Provincial, Local, or Municipal Purposes.
10. Local Works and Undertakings other than such as are of the following Classes:—
  - (a) Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province;
  - (b) Lines of Steam Ships between the Province and any British or Foreign Country;
  - (c) Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces.
11. The Incorporation of Companies with Provincial Objects.
12. The Solemnization of Marriage in the Province.
13. Property and Civil Rights in the Province.
14. The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.
15. The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section.
16. Generally all Matters of a merely local or private Nature in the Province.

### *Education.*

Legislation  
respecting  
Education.

93. In and for each Province the Legislature may exclusively make Laws in relation to Education, subject and according to the following Provisions:—

- (1) Nothing in any such Law shall prejudicially affect any Right or Privilege with respect to Denominational Schools which any Class of Persons have by Law in the Province at the Union:

- (2) All the Powers, Privileges, and Duties at the Union by Law conferred and imposed in Upper Canada on the Separate Schools and School Trustees of the Queen's Roman Catholic Subjects shall be and the same are hereby extended to the Dissentient Schools of the Queen's Protestant and Roman Catholic Subjects in Quebec:
- (3) Where in any Province a System of Separate or Dissentient Schools exists by Law at the Union or is thereafter established by the Legislature of the Province, an Appeal shall lie to the Governor General in Council from any Act or Decision of any Provincial Authority affecting any Right or Privilege of the Protestant or Roman Catholic Minority of the Queen's Subjects in relation to Education:
- (4) In case any such Provincial Law as from Time to Time seems to the Governor General in Council requisite for the due Execution of the Provisions of this Section is not made, or in case any Decision of the Governor General in Council on any Appeal under this Section is not duly executed by the proper Provincial Authority in that Behalf, then and in every such Case, and as far only as the Circumstances of each Case require, the Parliament of Canada may make remedial Laws for the due Execution of the Provisions of this Section and of any Decision of the Governor General in Council under this Section. (43)

*Uniformity of Laws in Ontario, Nova Scotia and New Brunswick.*

**94.** Notwithstanding anything in this Act, the Parliament of Canada may make Provision for the Uniformity of all or any of the Laws relative to Property and Civil Rights in Ontario, Nova Scotia, and New Brunswick, and of the Procedure of all or any of the Courts in Those Three Provinces, and from and after the passing of any Act in that Behalf the Power of the Parliament of Canada to make Laws in relation to any Matter comprised in any such Act shall, notwithstanding anything in this Act, be unrestricted; but any Act of the Parliament of Canada making Provision for such Uniformity shall not have effect in any Province unless and until it is adopted and enacted as Law by the Legislature thereof.

Legislation for Uniformity of Laws in Three Provinces.

*Old Age Pensions.*

Legislation respecting old age pensions and supplementary benefits.

**94A.** The Parliament of Canada may make laws in relation to old age pensions and supplementary benefits, including survivors' and disability benefits irrespective of age, but no such law shall affect the operation of any law present or future of a provincial legislature in relation to any such matter. (44)

*Agriculture and Immigration.*

Concurrent  
Powers of  
Legislation  
respecting  
Agriculture,  
etc.

**95.** In each Province the Legislature may make Laws in relation to Agriculture in the Province, and to Immigration into the Province; and it is hereby declared that the Parliament of Canada may from Time to Time make Laws in relation to Agriculture in all or any of the Provinces, and to Immigration into all or any of the Provinces; and any Law of the Legislature of a Province relative to Agriculture or to Immigration shall have effect in and for the Province as long and as far only as it is not repugnant to any Act of the Parliament of Canada.

**101.** The Parliament of Canada may, notwithstanding anything in this Act, from Time to Time provide for the Constitution, Maintenance, and Organization of a General Court of Appeal for Canada, and for the Establishment of any additional Courts for the better Administration of the Laws of Canada. (46)

General Court  
of Appeal, etc.

Property in  
Lands, Mines,  
etc.

**109.** All Lands, Mines, Minerals, and Royalties belonging to the several Provinces of Canada, Nova Scotia, and New Brunswick at the Union, and all Sums then due or payable for such Lands, Mines, Minerals, or Royalties, shall belong to the several Provinces of Ontario, Quebec, Nova Scotia, and New Brunswick in which the same are situate or arise, subject to any Trusts existing in respect thereof, and to any Interest other than that of the Province in the same. (48)

**132.** The Parliament and Government of Canada shall have all Powers necessary or proper for performing the Obligations of Canada or of any Province thereof, as Part of the British Empire, towards Foreign Countries, arising under Treaties between the Empire and such Foreign Countries.

Treaty  
Obligations.

**55.** Where a Bill passed by the Houses of the Parliament is presented to the Governor General for the Queen's Assent, he shall declare, according to his Discretion, but subject to the Provisions of this Act and to Her Majesty's Instructions, either that he assents thereto in the Queen's Name, or that he withholds the Queen's Assent, or that he reserves the Bill for the Signification of the Queen's Pleasure.

Royal Assent to  
Bills, etc.

Disallowance  
by Order in  
Council of Act  
assented to by  
Governor  
General.

**56.** Where the Governor General assents to a Bill in the Queen's Name, he shall by the first convenient Opportunity send an authentic Copy of the Act to one of Her Majesty's Principal Secretaries of State, and if the Queen in Council within Two Years after Receipt thereof by the Secretary of State thinks fit to disallow the Act, such Disallowance (with a Certificate of the Secretary of State of the Day on which the Act was received by him) being signified by the Governor General, by Speech or Message to each of the Houses of the Parliament or by Proclamation, shall annul the Act from and after the Day of such Signification.

Signification of  
Queen's  
Pleasure on Bill  
reserved.

**57.** A Bill reserved for the Signification of the Queen's Pleasure shall not have any Force unless and until, within Two Years from the Day on which it was presented to the Governor General for the Queen's Assent, the Governor General signifies, by Speech or Message to each of the Houses of the Parliament or by Proclamation, that it has received the Assent of the Queen in Council.

An Entry of every such Speech, Message, or Proclamation shall be made in the Journal of each House, and a Duplicate thereof duly attested shall be delivered to the proper Officer to be kept among the Records of Canada.

#### 6.—THE FOUR PROVINCES.

Application to  
Legislatures of  
Provinces  
respecting  
Money Votes,  
etc.

**90.** The following Provisions of this Act respecting the Parliament of Canada, namely,—the Provisions relating to Appropriation and Tax Bills, the Recommendation of Money Votes, the Assent to Bills, the Disallowance of Acts, and the Signification of Pleasure on Bills reserved,—shall extend and apply to the Legislatures of the several Provinces as if those Provisions were here re-enacted and made applicable in Terms to the respective Provinces and the Legislatures thereof, with the Substitution of the Lieutenant Governor of the Province for the Governor General, of the Governor General for the Queen and for a Secretary of State, of One Year for Two Years, and of the Province for Canada.

VICTORIA CHARTER (1971)

Art. 44. The Parliament of Canada may make laws in relation to old age pensions and supplementary benefits including survivors' and disability benefits irrespective of age, and in relation to family, youth, and occupational training allowances, but no such law shall affect the operation of any law present or future of a Provincial Legislature in relation to any such matter.

Art. 45. The Government of Canada shall not introduce a bill in the House of Commons in relation to a matter described in Article 44 unless it has, at least ninety days before such introduction, advised the Government of each Province of the substance of the proposed legislation and requested its views thereon.

Art. 59. The enactments set out in the first column of the Schedule, hereby repealed to the extent indicated in the second column thereof, shall continue as law in Canada under the names set forth in the third column thereof and as such shall, together with this Charter, collectively be known as the Constitution of Canada, and amendments thereto shall henceforth be made only according to the authority contained therein.

Art. 60. Every enactment that refers to an enactment set out in the Schedule by the name in the first column thereof is hereby amended by substituting for that name the name in the third column thereof.

This Schedule is NOT final,  
subject to confirmation

# S C H E D U L E

Enactments	Extent of Repeal	New Name
British North America Act, 1867, 30-31 Vict., c. 3 (U.K.).	Long title; preamble; the heading immediately preceding section 1; sections 1, 5, the words between brackets in section 12; sections 19, 20, 37, 40, 41, 47, 50, the words "and to Her Majesty's Instructions" and the words "or that he reserves the Bill for the Signification of the Queen's Pleasure" in section 55; sections 56, 57, 63; the words between brackets in section 65; sections 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 83, 84, 85, 86; the words "the Disallowance of Acts, and the Signification of Pleasure on Bills reserved" and the words "of the Governor General for the Queen and for a Secretary of State, of One Year for Two Years, and of the Province for Canada" in section 90; head (1) of section 91; head (1) of section 92; 94A; sections 101, 103, 104, 105, 106, 107, 119, 120, 122, 123; the words between brackets in section 129; sections 130, 134, 141, 142; the heading immediately preceding section 146; sections 146, 147; the First Schedule; the Second Schedule.	Constitution Act, 1867.

## SPECIAL JOINT COMMITTEE ON THE CONSTITUTION (1972)

### *Chapter 17—The Division of Powers*

49. The use of exclusive lists of Federal and Provincial powers, but with an extended list of concurrent powers, should be continued.
50. Concurrent powers which predominantly affect the national interest should grant paramountcy to the Federal Parliament and those which predominantly affect Provincial or local interests should grant paramountcy to the Provincial legislatures.
51. The Constitution should permit the delegation of executive and administrative powers (as at present), but not of legislative powers except where expressly specified in this Report.

### *Chapter 18—The General Legislative Power of Parliament*

52. The "Peace, Order, and good Government" power should be retained in the Constitution as an expression of the overriding Federal legislative power over matters of a national nature.
53. Since the Federal General Legislative Power is counterbalanced by a Provincial power over matters of a Provincial or local nature, there is no place for a purely residuary power.

### *Chapter 19—Taxing Powers*

54. Generally speaking and subject to recommendation 55, we endorse the principle that the Federal and Provincial Governments should have access to all fields of taxation. However, in order to bring about a division of revenues that may accurately reflect the priorities of each government, there should be Federal-Provincial consultations to determine the most equitable means of apportioning joint fields of taxation in the light of:
  - (a) the projected responsibilities of each level of government in the immediate future;
  - (b) the anticipated increases in their respective expenditures;
  - (c) economic and administrative limitations, such as preserving sufficient leverage for the Federal Government, by means of its taxation system, to discharge effectively its function of managing the economy.
55. Provincial legislatures should have the right to impose indirect taxes provided that they do not impede interprovincial or international trade and do not fall on persons resident in other Provinces. These limitations could be satisfied by tax collection through an interprovincial or Federal-Provincial collection agency, or by tax collection agreements.

### *Chapter 20—The Federal Spending Power*

56. The power of the Federal Parliament to make conditional grants for general Federal-Provincial (shared-cost) programs should be subject to the establishment of a national consensus both for the institution of any new program and for the continuation of any existing one. A consensus would be established by the affirmative vote of the Legislatures in three of the four regions of Canada according to the following formula: the vote of the Legislatures in the Atlantic region would be considered to be in the affirmative if any two of the Legislatures of Nova Scotia, New Brunswick or Newfoundland were in favour; the vote of the Legislatures of the Western region would be considered to be in the affirmative with the agreement of any two of the four Legislatures. The consensus for existing joint programs should be tested every 10 years.
57. If a Province does not wish to participate in a program for which there is a national consensus, the Federal Government should pay the Government of that Province a sum equal to the amount it would have cost the Federal Government to implement the program in the Province. However, a tax collection fee of about 1 per cent, equivalent to the cost of collecting the money paid to the Province, should be deducted from the amount paid to such non-participating Provinces.
58. In order that the objectives of joint programs may be more effectively realized, conditional Federal grants should preferably be based on the cost of the programs in each Province. However, since a 50-50 cost-sharing formula, when applied to the expenditures made in each Province, constitutes too great an incentive in high-income Provinces, conditional Federal grants should not be made for that portion of Provincial expenditures which lies above the national average cost of the service. The maximum per capita amount to which a Province would be entitled would thus correspond to the per capita national expenditure, and additional expenditures by a Provincial Government would in no way increase the Federal grant to that Province.

# Chapter 21—Intergovernmental Relations

59. More communication and fuller cooperation among all levels of government are imperative needs. The achievement of these ends involves the improvement and simplification of the means of liaison and, where necessary, the creation of new mechanisms.
60. The Constitution should provide for a Federal-Provincial Conference of First Ministers to be called by the Prime Minister of Canada at least once a year unless in any year a majority of the First Ministers decide to dispense with the Conference.
61. The Federal Government should appoint a Minister of State for Intergovernmental Affairs to respond to the political challenges and opportunities resulting from closer intergovernmental relationships.
62. A permanent Federal-Provincial secretariat for intergovernmental relations should be established.
63. A tri-level conference among Federal, Provincial and Municipal governments should be called at least once a year.

# Chapter 22—Municipalities

64. While we recognize the difficulties of larger cities in providing for their needs, financing their programs and determining their own priorities, as well as in negotiating with the Provincial and Federal Governments on works which seriously affect municipal planning, and also their need for more status and more autonomy in order to achieve these goals, we do not see how these matters can be entrenched in the Constitution. They should be negotiated between the cities and the Provincial Governments under whose jurisdiction they fall.
65. The municipalities in each Province, in conjunction with their provincial and national bodies, should determine which representatives from what municipalities would attend the annual tri-level conferences we have recommended in Recommendation 63.
66. Such tri-level meetings would not have the power of veto over any Federal or Provincial programs but would rather operate by way of moral suasion.
67. In the light of the injustice done municipalities by their having to rely on the property tax for the bulk of their revenue, there should be a sharing of tax fields between Governments that would allow municipalities direct access to other sources of revenue.
68. Where feasible, representatives of municipalities should meet with other levels of government to discuss common problems particularly in the area of economic planning through representation at meetings of the Ministers of Finance and Provincial Treasurers.

# Chapter 23—The Territories

69. The objective of Government policy for the Yukon and the Northwest Territories should be the fostering of self-government and provincial status.
70. The provisions of the British North America Act, 1871, section 2, which provide for the admission of new provinces by action of the Federal Government alone, should be continued, provided that no territory should become a province without its consent.
71. The Yukon and the Northwest Territories should each be entitled to representation in the Senate.

# Chapter 24—Offshore Mineral Rights

72. The Federal Government should have proprietary rights over the seabed offshore to the limit of Canada's internationally recognized jurisdiction, and the Federal Parliament should have full legislative jurisdiction over this subject matter.
73. There should be no constitutional provision as to the sharing of the profits from the exploitation of seabed resources. Nevertheless, we feel strongly that the Federal Government should share the profits of seabed development equally with the adjacent coastal Province rather than with all of the Provinces.
74. Sable Island should be recognized by the Constitution as part of the Province of Nova Scotia.

# Chapter 25—International Relations

75. Section 132 of the British North America Act should be repealed.
76. The Constitution should make it clear that: the Federal Government has exclusive jurisdiction over foreign policy, the making of treaties, and the exchange of diplomatic and consular representatives.
77. All formal treaties should be ratified by Parliament rather than by the Executive Branch of Government.
78. The Government of Canada should, before binding itself to perform under a treaty an obligation that deals with a matter falling within the legislative competence of the Provinces, consult with the Government of each Province that may be affected by the obligation.
79. The Government of a Province should remain free not to take any action with respect to an obligation undertaken by the Government of Canada under a treaty unless it has agreed to do so.
80. Subject to a veto power in the Government of Canada in the exercise of its exclusive power with respect to foreign policy, the Provincial Governments should have the right to enter into contracts, and administrative, reciprocal and other arrangements with foreign states, or constituent parts of foreign states, to maintain offices abroad for the conduct of Provincial business, and generally to

cooperate with the Government of Canada in its international activities.

## PART V—SOCIAL POLICY

### *Chapter 26—Social Security*

81. In the area of social security, there should be a greater decentralization of jurisdiction with a view to giving priority to the Provinces according to recommendations 82, 83 and 84.

82. With respect to social services, the present exclusive jurisdiction of Provincial Legislatures should be retained.

83. With respect to income insurance (including the Quebec and Canada Pension Plans), jurisdiction should be shared according to the present section 94A of the British North America Act, subject to the following exceptions:

(1) Workmen's Compensation should be retained under the exclusive jurisdiction of the Provincial Legislatures;

(2) Unemployment Insurance should be retained under the exclusive jurisdiction of the Canadian Parliament.

84. With respect to income support measures:

(1) Financial social assistance (Canada Assistance Plan, allowances to the blind, disability allowances, unemployment assistance) should be under the exclusive jurisdiction of the Provincial Legislatures;

(2) Veterans' allowances and allowances to Eskimos and Indians living on reserves should continue to be the exclusive responsibility of the Canadian Parliament;

(3) Demographic grants (old age pensions, family allowances and youth allowances) and guaranteed income payments (guaranteed income supplement) should be matters of concurrent jurisdiction with limited Provincial paramountcy as to the scale of benefits and the allocation of Federal funds among these income support programs. Thus the Federal Parliament would retain concurrent power to establish programs and to pay benefits to individuals under these programs. However, a Province would have the right to vary the national scheme established by Parliament with respect to the allocation within the Province between the various programs of the total amount determined by the Federal Government and with respect to the scale of benefits paid to individuals within the Province according to income, number of children, etc., within each program; provided that the benefits paid to individuals under each program should not be less than a certain percentage (perhaps half or two-thirds) of the amounts which would be paid under the scheme proposed by the Federal Government.

### *Chapter 27—Criminal Law*

85. Since we believe that each Province should be able to regulate the conduct of its own people in such matters as the operation of motor vehicles, Sunday observance, betting and lotteries, the Federal Parliament should have the right to delegate even to a single Province legislative jurisdiction over any part of the criminal law.

86. Because there is some ambiguity resulting from current practice, if not from the Constitution, the Federal power over the administration of criminal justice should be made clear so that the Federal Parliament would be seen to have clear and undoubted jurisdiction to enforce its own laws in the criminal field.

### *Chapter 28—Marriage and Divorce*

87. In keeping with our principle of control by the Provinces of their social destiny, the jurisdiction over "Marriage and Divorce" should be transferred to the Provincial Legislatures, subject to an agreed common definition of domicile.

### *Chapter 29—Education*

88. Education as such should remain an exclusively Provincial power as at present, subject to the guarantees for minorities set out elsewhere in this Report.

89. The Provinces should create a permanent office for cooperation and coordination in education, and Federal participation should be confined to the area of Federal jurisdiction over the education of native peoples, immigrants, and defence personnel and dependents.

### *Chapter 30—Communications*

90. The Parliament of Canada should retain exclusive jurisdiction over the means in broadcasting and other systems of communication.

91. The Provinces should have exclusive jurisdiction over the program content in provincial educational broadcasting, whatever means of communication is employed.

## PART VI—THE REGULATION OF THE ECONOMY

### *Chapter 31—Economic Policy*

92. The Federal Parliament and Government should retain the primary responsibility for general economic policy designed to achieve national economic goals. This means that they must have sufficient economic powers to regulate the economy through structural, monetary and fiscal policies.

93. National economic policies should take more account of regional objectives through coordinating mechanisms between governments and through considerable administrative decentralization in the operation of the Federal Government and its agencies.

94. Provincial and municipal governments should also take more account of national economic objectives.

#### *Chapter 32—Trade and Commerce*

95. Parliament should have exclusive jurisdiction over international and interprovincial trade and commerce, including the instrumentalities of such trade and commerce. Intraprovincial trade and commerce should remain under the jurisdiction of the Provincial Legislatures.

#### *Chapter 33—Income Controls*

96. In cases of national emergency, as defined by the Parliament of Canada, the Provinces should delegate to the Federal Parliament all additional powers necessary to control prices, wages and other forms of income, including rent, dividends and profits, to implement its prime responsibility for full employment and balanced economic growth.

#### *Chapter 34—Securities and Financial Institutions*

97. The matter of securities regulation, which has hitherto been under provincial jurisdiction, should become a concurrent jurisdiction with paramountcy in the Federal Parliament.

98. Where financial institutions (trust companies, insurance companies, finance companies, credit unions, caisses populaires) do business in more than one province, they should have to meet national standards as defined by the Federal Parliament; where they confine their activities to a single province, the Province should retain exclusive jurisdiction.

#### *Chapter 35—Competition*

99. The Federal Parliament ought to have a concurrent power with the Provincial Legislatures over competition in order that the regulation of unfair competition in all its aspects be subject to the national interest. In the event of conflicting legislation, the federal legislation should be paramount.

#### *Chapter 36—Air and Water Pollution*

100. Control over the pollution of air and water should be a matter of concurrent jurisdiction between the Provincial Legislatures and the Federal Parliament, and, as in section 95 of the British North America Act, the powers of the Federal Parliament should be paramount.

101. The concurrency of jurisdiction over the air and water pollution would necessitate both Federal-Provincial and Province-to-Province planning and co-ordination of programs.

102. We endorse the work of the Resources Ministers Council as a means of continuing consultation on matters of renewable resources.

#### *Chapter 37—Foreign Ownership and Canadian Independence*

103. The power of the Federal Parliament with respect to aliens should be clarified to ensure that Parliament has paramount power to deal with problems of foreign ownership.

104. The Federal Parliament should have the clear power to nationalize industry and expropriate land threatened by foreign takeovers or control contrary to the national interest.

105. The Federal Parliament should have jurisdiction over citizenship, and that power should include the power to promote national unity and a national spirit and to create institutions for these purposes.

DRAFT PROCLAMATION (1976)

No proposal

## PREMIERS' CONFERENCES (1976)

The Premiers reached unanimous agreement upon the following:

- a greater degree of provincial involvement in immigration; . . . .
- a strengthening of jurisdiction of provincial governments of taxation in the areas of primary production from lands, mines, minerals and forests;
- a provision that the declaratory powers of the federal government to declare a particular work for the general advantage of Canada would only be exercised when the province affected concurred.

In addition, the provinces were of the view that while patriation was desirable, it should be accompanied by the expansion of provincial jurisdiction and involvement in certain areas. These included:

- a) Culture - You will recall that culture was referred to in Parts IV and VI of the draft proclamation. The interprovincial discussions on culture focused on the addition of a new concurrent power to be included in the Constitution. This power would refer to arts, literature and cultural heritage and would be subject to provincial paramountcy. On this matter, there was a high degree of consensus on the principle and considerable progress was made with respect to a solution. There was also, however, firm opinion from one province that the provinces and the federal government should have concurrent jurisdictional powers in the area.

- b) Communications - In the draft proclamation, communications was referred to in Part VI. Discussions on this subject related to greater provincial control in communications, particularly in the area of cable television.

. . .

- d) Spending Power - Discussion on this matter focused on the necessity and desirability of having a consensus mechanism which must be applied before the federal government could exercise its spending power in areas of provincial jurisdiction.

. . .

(Extract from letter of October 14, 1976 from the Premier of Alberta to the Prime Minister of Canada)

#### DRAFT RESOLUTION (1977)

Art. 25        Before the Parliament of Canada may exercise its authority under section 92(10)(c) of the British North America Act, 1867 to declare any work or undertaking within a province to be for the general advantage of Canada or for the advantage of two or more provinces, the Government of Canada shall consult with the Government of the Province or Provinces in which the work or undertaking is located.

TELEX FROM THE PREMIER OF SASKATCHEWAN TO THE PRIME  
MINISTER OF CANADA (NOVEMBER 1977)

---

NOVEMBER 29, 1977

The Right Honourable Pierre Elliot Trudeau,  
P.C., Q.C., M.P.,  
Prime Minister of Canada,  
House of Commons,  
Ottawa, Ontario,  
K1A 0A2

My dear Prime Minister:

I am writing to discuss certain issues raised by the November 23rd judgement by the Supreme Court of Canada in the CIGOL case. As you know, the decision overturned the unanimous ruling of the Saskatchewan Court of Appeal in finding ultra vires Saskatchewan legislation and regulations respecting oil royalties and taxes.

The Supreme Court's decision poses a serious problem for the Government of Saskatchewan. The precedent established places at risk some \$500 million which has been collected since 1974 under the legislation. I want to assure you that this government intends to take whatever action may be necessary, and that is within our jurisdiction, to ensure that the major share of windfall profits from oil price increases are retained by the Saskatchewan people, and do not revert to the oil companies.

My concern, however, extends beyond the immediate practical difficulties faced by Saskatchewan.

It seems clear that the implications of the Court's decision for our federal system are profound. The grounds for the majority decision -- the manner in which the "direct taxation" test was applied, and the interpretation given to the federal trade and commerce power -- seem to put in serious jeopardy the capacity of all provinces to raise revenues from resources. Such a result would mark a fundamental change in Canadian jurisprudence, would affect the fiscal capacity of a number of provinces, and would constitute a grave risk to our federal system itself.

I am one who firmly believes that laws are best made, and changed, by elected legislatures. And I would view with concern any tendency on the part of Canadian governments to leave fundamental questions of policy to judicial determination.

My government has always acted, in good faith, on the assumption that the provinces have the power to control, and derive benefit from, the resources within their boundaries. That is our understanding of the letter and the spirit of the B.N.A. Act. In our view, it constitutes one of the basic underpinnings of our federal system.

That basic assumption, that fundamental premise of Confederation, has now been challenged. And I believe we must move quickly to restore a sense of confidence and certainty.

I believe that we must now face squarely the difficulties which the provinces have encountered in the area of resource taxation. I believe we must, without delay, take constitutional action that will confirm the powers of the provinces to control and tax resources.

As you know, the subject of resource taxation figured prominently in the constitutional discussions held last year by Canada's ten provincial Premiers. Unanimous agreement was reached on the need to clarify and strengthen provincial jurisdiction in this area. Indeed, the Premiers were unanimous on the specific wording of a constitutional amendment that would give provinces the right to levy indirect, as well as direct, taxation on resource production. Such a provision would go far to remove one perennial source of uncertainty and ground for litigation. And such a provision would be compatible, I believe, with positions adopted by the federal government in constitutional discussions prior to the Victoria Conference of 1971.

In view of the Court's reasoning in the CIGOL case, it may be necessary to consider, also, ways in which we could clearly delineate the boundary between the provinces' rights to tax resources and the federal government's jurisdiction over interprovincial and international trade and commerce.

I cannot believe that, at this time in Canada's history, you would welcome a decision by the Supreme Court that could have the effect of substantially enlarging federal jurisdiction at the expense of the provinces. I am confident, therefore, that you share my concern, and see some advantage in moving quickly and decisively to protect provincial authority.

I look forward to discussing these matters with you when we meet, December 7th, in Regina.

It is my intention to make the contents of this telex public on the morning of Wednesday, November 30th.

Yours sincerely,

Allan Blakeney,  
Premier

STATEMENT BY PREMIER OF ONTARIO TO TASK FORCE ON CANADIAN  
UNITY (NOVEMBER 1977)

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. . . I KNOW

THAT THERE ARE VARIOUS TECHNIQUES AT OUR DISPOSAL  
SUCH AS CONCURRENT JURISDICTION, DELEGATION OF  
POWERS, AND SPECIAL ADMINISTRATIVE ARRANGEMENTS.  
TO THE EXTENT THAT THEY PROVIDE FOR OUR REAL NEED  
IN THIS COUNTRY TO DO THINGS DIFFERENTLY, THEY  
GIVE ME NO PARTICULAR CAUSE FOR CONCERN, AND MAY  
EVEN CONTRIBUTE TO STRIKING A BETTER BALANCE  
BETWEEN OUR UNITY AND OUR DIVERSITY.

. . .

# BILL C-60 (1978)

## VIII DISTRIBUTION OF LEGISLATIVE POWERS

### (a) Powers of the Parliament

Legislative  
authority of the  
Parliament of  
Canada

**\*91.** It shall be lawful for the Governor General of Canada, by and with the advice and consent of the House of the Federation and the House of Commons of Canada in Parliament assembled, to make laws for the peace, order and good government of Canada, in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the legislatures of the provinces; and for greater certainty, but not so as to restrict the generality of the foregoing terms of this section, it is hereby declared that (notwithstanding anything in this Act) the exclusive legislative authority of the Parliament of Canada extends to all matters within the classes of subjects next hereinafter enumerated, that is to say:

1. The amendment from time to time of the Constitution of Canada, except as regards matters coming within the classes of subjects by this Act assigned exclusively to the legislatures of the provinces, or as regards rights or privileges granted or secured by the Constitution of Canada to the legislature or the government of a province or to any class of persons with respect to schools or as regards the use of the English or the French language, or as regards the principles with respect to elections to legislative bodies declared by section 10 to be fundamental principles of the Constitution of Canada and the requirements respecting legislative bodies and legislatures set out in sections 11 and 12.

91-95. These designated provisions contain the principal federal and provincial legislative powers. Except as noted below, ss. 91 to 95 repeat, without substantive change, the present ss. 91, 92, 93, 94A and 95. The present s. 94, which permits federal legislation for the uniformity of laws relative to property and civil rights, is deleted. These sections would come into effect as part of the *Constitution of Canada Act* only upon entrenchment and after any changes that have been agreed upon have been made in them. (See ss. 125 and 126 of the Bill and the Introduction hereto, category 4.)

91. This section contains the principal legislative powers of the Parliament of Canada. It is the present s. 91 with modifications in the opening words and head 1. to reflect the provisions of the Bill that would modify existing constitutional institutions and to make reference to the democratic principles relating to elections and sessions of Parliament contained in ss. 10 to 12 of the Bill. (See the present s. 91 and ss. 10 to 12 of the Bill.)

The opening words and head 1. of s. 91 at present read as follows:

“91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next herein-after enumerated; that is to say,—

- 1A. The public debt and property.
2. The regulation of trade and commerce.
- 2A. Unemployment insurance.
3. The raising of money by any mode or system of taxation.
4. The borrowing of money on the public credit.
5. Postal service.
6. The census and statistics.
7. Militia, military and naval service, and defence.
8. The fixing of and providing for the salaries and allowances of civil and other officers of the government of Canada.
9. Beacons, buoys, lighthouses, and Sable Island.
10. Navigation and shipping.
11. Quarantine and the establishment and maintenance of marine hospitals.
12. Sea coast and inland fisheries.
13. Ferries between a province and any British or foreign country or between two provinces.
14. Currency and coinage.
15. Banking, incorporation of banks, and the issue of paper money.
16. Savings banks.
17. Weights and measures.
18. Bills of exchange and promissory notes.
19. Interest.
20. Legal tender.
21. Bankruptcy and insolvency.
22. Patents of invention and discovery.
23. Copyrights.
24. Indians, and lands reserved for the Indians.

1. The amendment from time to time of the Constitution of Canada, except as regards matters coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the provinces, or as regards rights or privileges by this or any other Constitutional Act granted or secured to the Legislature or the Government of a province, or to any class of persons with respect to schools or as regards the use of the English or the French language or as regards the requirements that there shall be a session of the Parliament of Canada at least once each year, and that no House of Commons shall continue for more than five years from the day of the return of the Writs for choosing the House: Provided, however, that a House of Commons may in time of real or apprehended war, invasion or insurrection be continued by the Parliament of Canada if such continuation is not opposed by the votes of more than one-third of the members of such House."

25. Naturalization and aliens.
26. Marriage and divorce.
27. The criminal law, except the constitution of courts of criminal jurisdiction, but including the procedure in criminal matters.
28. The establishment, maintenance, and management of penitentiaries.
29. Such classes of subjects as are expressly excepted in the enumeration of the classes of subjects by this Act assigned exclusively to the legislatures of the provinces.

And any matter coming within any of the classes of subjects enumerated in this section shall be deemed not to come within the class of matters of a local or private nature comprised in the enumeration of the classes of subjects by this Act assigned exclusively to the legislatures of the provinces.

*(b) Exclusive Powers of Provincial Legislatures*

Subjects of  
exclusive  
provincial  
legislation

**\*92.** In each province, the legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated, that is to say:

1. The amendment from time to time, notwithstanding anything in this Act, of the constitution of the province except as regards the office of Lieutenant Governor, or as regards the principles with respect to elections to legislative bodies declared by section 10 to be fundamental principles of the Constitution of Canada and the requirements respecting legislative bodies and legislatures set out in sections 11 and 12, as those principles and requirements apply by their terms to the legislative assembly and legislature.
2. Direct taxation within the province in order to the raising of a revenue for provincial purposes.
3. The borrowing of money on the sole credit of the province.
4. The establishment and tenure of provincial offices and the appointment and payment of provincial officers.

**92.** This section contains the principal powers of the provincial legislatures. It is the present s. 92 with modifications in head 1. that would restrict the provinces from amending their constitutions in respect of universal suffrage in elections, the maximum five year life of legislatures and annual sessions of legislatures. (See the present s. 92 and ss. 10, 11 and 12 of the Bill.)

The opening words and head 1. of s. 92 at present read as follows:

**“92.** In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next herein-after enumerated; that is to say,—

**1.** The Amendment from Time to Time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the Office of Lieutenant Governor.”

5. The management and sale of the public lands belonging to the province and of the timber and wood thereon.
6. The establishment, maintenance, and management of public and reformatory prisons in and for the province.
7. The establishment, maintenance, and management of hospitals, asylums, charities, and eleemosynary institutions in and for the province, other than marine hospitals.
8. Municipal institutions in the province.
9. Shop, saloon, tavern, auctioneer, and other licences in order to the raising of a revenue for provincial, local, or municipal purposes.
10. Local works and undertakings other than such as are of the following classes:
  - (a) Lines of steam or other ships, railways, canals, telegraphs, and other works and undertakings connecting the province with any other or others of the provinces, or extending beyond the limits of the province;
  - (b) Lines of steam ships between the province and any British or foreign country;
  - (c) Such works as, although wholly situate within the province, are before or after their execution declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more of the provinces.
11. The incorporation of companies with provincial objects.
12. The solemnization of marriage in the province.
13. Property and civil rights in the province.
14. The administration of justice in the province, including the constitution, maintenance, and organization of provincial courts, both of civil and of criminal jurisdiction, and including procedure in civil matters in those courts.

15. The imposition of punishment by fine, penalty, or imprisonment for enforcing any law of the province made in relation to any matter coming within any of the classes of subjects enumerated in this section.
16. Generally all matters of merely local or private nature in the province.

(c) *Education*

Legislation  
respecting  
education

**\*93.** In and for each province, the legislature may exclusively make laws in relation to education, subject and according to

(a) in the case of Ontario, Quebec, Nova Scotia, New Brunswick, British Columbia and Prince Edward Island, the provisions of section 93 of the Act of 1867,

(b) in the case of Manitoba, the provisions of section 22 of *the Manitoba Act, 1870*,

(c) in the case of Saskatchewan and Alberta, the provisions of section 93 of the Act of 1867 as altered with respect to Saskatchewan by section 17 of *The Saskatchewan Act* and with respect to Alberta by section 17 of *The Alberta Act*, and

(d) in the case of Newfoundland, the provisions of Term 17 of the Terms of Union of Newfoundland with Canada,

as those provisions applied or extended to and were in force in and for that province, immediately before the coming into effect of this section

(d) *Old Age Pensions*

Legislation  
respecting old  
age pensions  
and supplementary  
benefits

**\*94.** The Parliament of Canada may make laws in relation to old age pensions and supplementary benefits, including survivors' and disability benefits irrespective of age, but no such law shall affect the operation of any law present or future of a provincial legislature in relation to any such matter.

**93. New.** This section, by reference to the present s. 93 and to the present provisions of the other statutes mentioned in paragraphs (a) to (d) herein, would consolidate and continue in force the present authority of the provinces in respect of education.

**94.** This section, which is the present s. 94A, would carry forward the existing federal authority respecting old age pensions and supplementary benefits.

(e) *Agriculture and Immigration*

Concurrent powers of legislation respecting agriculture and immigration

**\*95.** In each province the legislature may make laws in relation to agriculture in the province, and to immigration into the province; and it is hereby declared that the Parliament of Canada may from time to time make laws in relation to agriculture in all or any of the provinces, and to immigration into all or any of the provinces; and any law of the legislature of a province relative to agriculture or to immigration shall have effect in and for the province as long and as far only as it is not repugnant to any Act of the Parliament of Canada.

Requirement to consult with respect to use of declaratory power of Parliament

**\*98.** Before the Parliament of Canada may exercise its legislative authority under the Constitution of Canada to declare any work, although wholly situate within a province, to be for the general advantage of Canada or for the advantage of two or more of the provinces, the government of Canada shall consult with the government of the province or the governments of each of the provinces in which the work is situate.

Provisions applicable when Charter extended to matters within provincial legislative authority

**131.** (3) From and after such time as it is provided by the legislature of any province, acting within the authority conferred on it by the Constitution of Canada, that the provisions of the *Canadian Charter of Rights and Freedoms* as enacted by this Act extend to matters coming within its legislative authority,

(a) the provisions of the Act of 1867 respecting the reservation of assent to Bills, the disallowance of Acts and the signification of pleasure on Bills reserved, as those provisions extend and are made applicable to the legislatures of the several provinces by virtue of and in the manner provided in section 90 of the Act of 1867, shall cease to extend and be applicable to the legislature of that province as if they were herein repealed or made inapplicable in terms to that province and its legislature;

Constitution of Canada to govern as supreme law of Canadian federation

**\*35.** The Constitution of Canada shall be the supreme law of the Canadian federation, and all of the institutions of the Canadian federation shall be governed by it and by the conventions, customs and usages hallowed by it, as shall all of the people of Canada.

**95.** This section is the present s. 95. It would carry forward the existing federal and provincial powers respecting agriculture and immigration.

**98.** Before Parliament exercises its powers under the present s. 92, head 10(c) to declare a work to be for the general advantage of Canada, (i.e. assumes jurisdiction over the work) there must be consultation with the province or provinces to be affected by the declaration.

(3) Where a province adopts the Charter, the federal government would cease to be able to disallow statutes of that province. Also, because, upon adoption of the Charter, Ontario would be required by s. 15(2) to publish its statutes in French, as well as English, for the first time, some flexibility would be given as to the commencement of this requirement.

**35.** This new section states the basic constitutional principle that the Constitution is the supreme law of Canada.

Administration  
and enforce-  
ment of  
respective laws

**\*36.** The administration and enforcement of the laws of the federal authority in and for Canada shall rest with that authority, and the administration and enforcement of the laws of each province or territory of Canada shall rest with it, except as otherwise provided by or pursuant to the Constitution of Canada or by any agreement or arrangement not inconsistent therewith.

**36.** Under this new section, the federal or provincial authority responsible for making a law would be responsible for administering and enforcing it unless otherwise agreed or provided by law.

Designated  
provisions:  
approval of  
additional  
measures to be  
taken when  
agreed

**125.** The enactment of this Act by the Parliament of Canada does not extend to any following provision (in this Part referred to as a "designated provision") set out in Part I of this Act, namely:

- (a) section 31,
- (b) section 33,
- (c) sections 35 to 40,
- (d) sections 79 to 95,
- (e) sections 97 to 99,
- (f) section 120, and
- (g) sections 121 to 123;

and the inclusion in this Act of any designated provision does not constitute an assertion by the Parliament of Canada of authority to enact any such provision; but in order that effect may be given as soon as may be to each such designated provision as part of the Constitution of Canada, it is hereby declared and directed that, on and after the commencement of this Act and by virtue of its enactment by the Parliament of Canada, both Houses of the Parliament of Canada shall be deemed to have approved of resolutions for the amendment of the Constitution of Canada in the form and to the effect of each of those provisions, each of which resolutions may be taken up and dealt with, either severally or in combination with any other or others of them, by action as on a joint address or by proclamation, as the case may be, as and when it or they may lawfully be so taken up and dealt with in accordance with the procedure for such amendment then recognized by accepted usage, if there is then no procedure for that purpose expressly provided for by the Constitution of Canada, or in accordance with the procedure for that purpose expressly so provided for, if there is then such a procedure.

**125.** This section provides for the coming into effect of the designated provisions. (See the Introduction hereto, categories 4 and 5.)

Amendment of  
designated  
provisions not  
precluded

126. Nothing in section 125 shall be construed as precluding the amendment of any designated provision, including, but without limiting the generality of that expression, any designated provision set out in sections 91 to 95, before such time as any resolution with respect thereto that is deemed by section 125 to have been approved by both Houses of the Parliament of Canada is taken up and dealt with as provided in that section.

126. This section emphasizes the possibility of amendment to any designated section before it is entrenched pursuant to s. 125.

## REGINA PREMIERS' CONFERENCE (1978)

### 5. A Comprehensive Approach

It was agreed that discussions on constitutional reform cannot be compartmentalized into artificial divisions. Institutional and jurisdictional problems interact in such a way that they must be considered together.

The Premiers agreed that problems involving the distribution of power between the federal government and the provinces have been a major source of friction and have a negative impact on the daily lives of all Canadians. These problems demand equal attention.

## II. THE SUBSTANCE OF CONSTITUTIONAL REFORM

### 1. The Consensus Reached by Premiers in 1976

Provinces agreed to advance, again, the 1976 consensus, which has not received an adequate response from the federal government. That consensus constitutes a useful starting point for discussions with the federal government in crucial areas involving the distribution of powers, and represents a positive contribution toward the resolution of significant problems.

Quebec said that, while committed to its option of sovereignty-association, it could generally go along with the 1976 consensus and most of the other constitutional points raised in Regina. Quebec went on to state that this approach falls within the mandate of the Quebec government to reinforce provincial rights, within the present system, and also illustrates some of the minimal changes required to make the federal system a serious alternative in the forthcoming Quebec referendum.

The 1976 consensus covered a number of areas of concern:

- immigration
- language rights
- resource taxation
- the federal declaratory power
- annual Conference of First Ministers
- creation of new provinces
- culture
- communications
- Supreme Court of Canada
- the federal spending power
- regional disparities and equalization.

## 2. Other Areas of Consensus

In addition, the Premiers, in the course of their discussion in Regina, have reached agreement on a number of additional substantive matters, on which federal views are invited:

- abolition of the now obsolete federal powers to reserve or disallow provincial legislation
- a clear limitation on the federal power to implement treaties, so that it cannot be used to invade areas of provincial jurisdiction
- the establishment of an appropriate provincial jurisdiction with respect to fisheries.
- confirmation and strengthening of provincial powers with respect to natural resources
- full and formal consultation with the provinces in appointments to the Superior, District and County Courts of the provinces
- appropriate provincial involvement in appointments to the Supreme Court of Canada.

### 3. Other Subjects

Further, there was a consensus that a number of additional matters require early consideration

- the federal emergency power
- formal access of the provinces to the field of indirect taxation
- the federal residual power
- amending formula and patriation
- the delegation of legislative powers between governments.

All Premiers expressed grave concern that section 109 of the B.N.A. Act, concerning provincial ownership of natural resources, has not been carried forward into the proposed new constitution.

(Extract from Communiqué)

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. . .

there must continue to be two co-equal, autonomous and accountable orders of government in Canada, each with its own clear and distinct set of responsibilities.

To the extent that there are areas of government activity which today are not clearly assigned to either order of government, constitutional reform must be designed to achieve more precision.

To the extent that there are areas of government activity in which both orders of government have become involved, disentanglement of jurisdictions with revenues to match must be pursued as a priority to achieve more clearly defined roles and responsibilities, and a lessening of the financial burden on taxpayers.

. . .

. . .

To the extent that shifts in current federal and provincial responsibilities are necessary, they should be designed to ensure more complete provincial responsibility for social and cultural matters and more complete federal responsibility for the co-ordination of economic and fiscal matters.

. . .

Federalism in Canada is not only a form of political union but also a form of economic union. The Constitution must, therefore, ensure the free and unimpeded flow of people, goods, capital and services across the country.

. . .

(Pages 5 and 7 from Ontario paper "A Restatement of Ontario's Views on Canada and the Constitution")

LETTER FROM THE PREMIER OF SASKATCHEWAN TO THE PRIME  
MINISTER OF CANADA (OCTOBER 1978)

October 10, 1978.

The Right Honourable Pierre Elliott  
Trudeau, P.C., Q.C., M.P.,  
Prime Minister of Canada,  
House of Commons,  
Ottawa, Ontario.  
K1A 0A6

Dear Prime Minister:

This letter is prompted by the decision of the Supreme Court of Canada, handed down on October 3rd, in the case of Central Canada Potash Co. Limited and

the Attorney General of Canada v. the Government of Saskatchewan et al. That judgment raises grave concerns with regard to provincial powers over natural resources, and will significantly influence the present discussions on constitutional reform.

First, I want to outline briefly the background and issues in the Central Canada case, although I do not intend to go into the facts and legal arguments in any great detail.

In the late 1960's and early 1970's, because of world market conditions and other factors, potash produced in Saskatchewan was being sold at very low prices -- in some instances below the cost of production -- and the potash industry in Saskatchewan was in a precarious financial position. The government of the day, under the late Premier Ross Thatcher, took steps to allocate production of potash according to the available market, and to establish a minimum floor price. Although the measures taken had very little impact upon the provincial government's revenues, they were crucial for the economy of the province and the continued viability of the potash industry. The present government inherited the prorationing scheme and continued the program, with production controls being effective until 1973.

All but one of the potash companies supported prorationing, the exception being Central Canada Potash, which, because of its unique captive market in the United States, was in a position different from the rest of the industry. In 1972 that company attempted unsuccessfully to force the Minister of Mineral Resources, through court action, to grant it additional production licences; when that action failed, it commenced another action, claiming that the prorationing measures infringed the federal trade and commerce power. The latter action was commenced in December 1972. The Attorney General of Canada applied to be joined as a plaintiff in the action, and obtained an order of the Court of Queen's Bench in November 1973 allowing the Canadian government to be a plaintiff along with Central Canada. The action was tried in 1974 and judgment given for the plaintiffs in May 1975. The province appealed, and the Court of Appeal for Saskatchewan, in a unanimous judgment, allowed the appeal in January 1977. Leave to appeal to the Supreme Court of Canada was granted, and the case was heard last December. In its judgment last week, the Supreme Court found the prorationing scheme to be beyond provincial powers.

The Central Canada Potash decision is only the latest in a series of unsettling judgments concerning resource jurisdiction. You will recall, in particular, the decision of the Supreme Court of Canada in the case of Canadian Industrial Gas and Oil Ltd. v. the Government of Saskatchewan in November 1977, which found Saskatchewan's oil income tax and royalty surcharge invalid and ordered repayment thereof.

Two points are worthy of special note.

The Supreme Court of Canada, in both the Central Canada and the CIGOL judgments, overturned the unanimous decision of the Saskatchewan Court of Appeal (and, in the latter case, the verdict of the original trial judge as well).

It is noteworthy, too, that the Attorney General of Canada was a co-plaintiff in the Central Canada case. This I found particularly disturbing. It will be recalled that there were extensive discussions during the genesis of prorationing, in late 1969 and early 1970, involving senior legal officials of our two governments, involving indeed the then federal Minister of Justice, John Turner. Those discussions related to the constitutional validity of the prorationing scheme and resulted in certain amendments to the regulations to satisfy federal concerns. The government of the day of this province co-operated fully with the federal authorities to attempt to avoid or resolve potential constitutional difficulties. The record clearly shows that the governments of both Saskatchewan and Canada believed the prorationing scheme to be constitutionally valid. The only change in the prorationing regulations made by our government since 1971 was one which could only serve to strengthen their constitutional validity. You will understand, therefore, why many, including myself, perceived the subsequent action of the Attorney General of Canada in joining the action as a plaintiff against the province as a complete about-face and betrayal on the part of the federal government.

In addition to its interventions in court cases, the federal government has taken other steps to lessen provincial powers to manage and tax resources. These affect all the Western provinces. Examples that come readily to mind include the unilateral changes to the Income Tax Act that disallowed the deduction from corporate income of provincial taxes and royalties for federal tax purposes; the Petroleum Administration Act, under which the federal government assumed the power to set oil prices; the export tax on oil; certain provisions of the proposed Nuclear Control and Administration Act (Bill C-14); and, most recently, the declared intention of the federal government to abrogate the oil pricing agreement with the producing provinces.

Taken together, these actions seem to indicate a deliberate strategy to expand federal jurisdiction at the expense of provincial powers to manage and tax natural resources. In my view, the federal determination to further centralize power at the expense of the provinces is imposing very serious strains on our federal system.

I have made these same arguments over and over again. You will perhaps recall my statement at the First Ministers' Conference in December 1976, when I urged the federal government "to drop its aggressive anti-provincial stance in the taxation and control of natural resources". And you may remember my letter to you of November 29, 1977, in which I referred to "a grave risk to our federal system itself". I could cite example after example.

In the two reports of the Western Premiers' Task Force on Constitutional Trends, the four western Premiers have identified a number of federal intrusions into provincial jurisdiction over resources.

The ten provincial Premiers, in 1976 and again in Regina in August of this year, reached agreement on the need to strengthen provincial powers over resources. Premier Lougheed's letter to you of October 14, 1976, reported our unanimous agreement on a specific text dealing with "a strengthening of jurisdiction of provincial governments" in the field of resource taxation. In Regina last August, the Premiers "agreed to advance, again, the 1976 consensus, which has not received an adequate response from the federal government".

My views on national unity are well known by now. I am sympathetic to the special problems of the province of Quebec. But I must tell you frankly that the time has come for you and your government to begin to respond to the legitimate demands of the Western provinces. If you continue to ignore the West, you will imperil the very fabric of our nation.

In terms of the constitutional changes that are required with respect to provincial jurisdiction over resources, it is perhaps not appropriate in this letter to consider specific wording. Generally, though, Saskatchewan will propose:

1. that provinces be allowed to levy indirect, as well as direct, taxes on resource production, notwithstanding the fact that the production is exported or that the incidence of the tax may be thought to fall outside the province. In particular, we will propose that each province be authorized to make laws to raise money by any system of taxation in respect of forests, mines and minerals, or the production therefrom in the province. This is along the lines of the agreement reached by the ten Premiers in 1976.
2. that the federal trade and commerce power be clarified so that it can no longer be used to frustrate a province's legitimate efforts to influence the production and marketing of its natural resources. In particular, we will propose a provision along the lines of that proposed by the Canadian Bar Association's Committee on the Constitution.
3. that changes be made to the Supreme Court of Canada, so that it will not only be, but be seen to be, an impartial arbiter of federal-provincial disputes.

In respect of the first of these proposals, you will know that provincial power of taxation flows from section 92(2) of The British North America Act which states:

"92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subject next herein-after enumerated; that is to say, --

2. Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes."

The courts have developed a complicated jurisprudence based on distinctions between indirect and direct taxation. The tests developed for "directness" of a tax are based on outmoded economic theories and bear little relevance to modern conditions. The courts, however, have continued to use these tests, and to expand on them to the point where it is now very difficult to predict the outcome of any case involving a novel form of taxation. It is my strongly held view that the time has come to abandon this outmoded distinction between direct and indirect taxation. With respect to its own resources, a province must not be arbitrarily excluded from any appropriate system of taxation.

On the second point above, namely the need to clarify the federal trade and commerce power, it is clear to me that the courts have in recent years greatly expanded this power as a means of restricting a province's control over the production, marketing and pricing of its resources. The Central Canada Potash case is the most recent manifestation of that expansion. The implications for proper management and regulation of provincial resources are grave and are incompatible with the effective control of resource development. It is time for action to limit the exercise of this power, substantially to the meaning given it by the courts during most of Canada's history. I shall be pressing for changes to achieve this result.

Regarding the third proposal, the time has come to make such changes as are necessary to ensure that the Supreme Court of Canada is seen to be independent and not unduly reflective of federal views in constitutional disputes. I do not question the integrity of those who serve on the present Court, nor am I questioning their ability. But I do question the wisdom of having the members of our Supreme Court, the final arbiter of constitutional disputes, appointed by the executive branch of one level of government, and largely representative of one part of the country -- without input from the provinces by the executive branch of provincial governments, by provincial legislatures, or by Parliament. It is clear that a provincial role in the appointment process would be desirable. Consideration might also be given to formal regional representation on the Court.

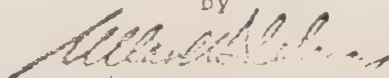
I will be raising these concerns at the First Ministers' Conference on the Constitution at the end of this month.

Let me emphasize once again our serious concern that the constitutional rights of provinces to manage their resources are being systematically eroded by a succession of federal actions and judicial rulings. That is a situation which I believe will not long be tolerated by the people of Saskatchewan and Western Canada.

I trust we can make early progress toward securing the necessary constitutional changes.

Yours truly,  
Original signed

by

  
Allan Blakeney,  
Premier

LAMONTAGNE/MACGUIGAN REPORT (OCTOBER 1978)

No proposal

CONSTITUTIONAL CONFERENCE (1978)

NOTE: The source of each extract is shown at the end in brackets.

**VI. Summary of Recommendations**

The Government of British Columbia recommends that:

- (1) The four principles of *nationalism, regionalism, benefit sharing* and *efficiency* should form the foundations for a new distribution of powers.
- (2) The starting point for a revised distribution of powers should be the identification of a few central *realms* of subject matters such as international relations, economics, culture, education, health, communications, transportation, justice, property. Following identification of these broad realms of subject matters, more specific subject matters should be identified and arranged as a group under the umbrella of the theme heading. This two-step approach would solve the current technical problem of the illogical arrangement of subject matters in sections 91 and 92 of the *B.N.A. Act*.
- (3) The Canadian Constitution should continue to have *three* lists of power—exclusive federal, exclusive provincial, and concurrent power.
- (4) There should be a *shared residuary power*. The enumeration of federal subject matters should conclude with a section such as "all other matters of national interest." The enumeration of provincial subject matters should conclude with the section "all matters of provincial or local interest."
- (5) In order to solve the serious problems of a distribution of powers which is too rigid, one or more of the following flexibility mechanisms should be given a primary place in a new distribution of powers:
  - (a) *concurrency with paramountcy*
  - (b) *delegation*
  - (c) allowing the federal government to *create* a law and the provincial governments to *administer* it.
- (6) Flexibility should not be achieved by granting some subject matters to some provinces and denying those matters to other provinces.

- (7) The federal government's powers of disallowance and reservation should be abolished.
- (8) The federal government's declaratory power should be retained, but with serious restrictions. A declaration that a provincial work has become one for the general advantage of Canada should require confirmation by a Senate reconstituted along the lines of British Columbia's Senate proposals before it becomes operative.
- (9) The Constitution should make clear the existence of the federal government's emergency power and should provide that the courts can apply the emergency power to validate federal legislation *only* if Parliament specifically declares that an emergency exists. Judicial inference of an emergency situation should not be permitted. Thirdly, the Constitution should provide for consultation with the provincial governments prior to the making of an emergency declaration if that declaration will result in a serious infringement on normal provincial powers.
- (10) The federal government's spending power should be retained, but with serious restrictions. Federal programs based on the spending power which relate to areas of provincial jurisdiction should require confirmation by a reconstituted Senate before becoming operative.
- (11) The principle of *universal access* should be the touchstone for the distribution of taxing powers. Two exceptions to this general rule could be: the imposition of customs and excise taxes could be reserved to the federal government while taxes on real property and retail sales tax could be reserved to the provinces. Finally, it is essential not to exaggerate the importance of access to tax fields as a panacea for provincial finances. Access alone will not be enough for less wealthy provinces—a fact which must be borne in mind in discussions of the distribution of taxing powers.
- (12) Both levels of government must respect the current distribution of powers and a new allocation once agreed upon. Major intrusions by one level of government into the jurisdiction of the other level seriously distorts the delicate balance of powers required for successful operation of federalism in Canada.

(Pages 33 and 34 from "British Columbia's Constitutional Proposals, Paper No. 8 - The Distribution of Legislative Powers." For a more complete analysis see full text available from the CICS.)

. . .

6. That the existing sections in the British North America Act protecting provincial ownership and control of natural resources be strengthened.
7. That the Constitution be clarified in order to re-affirm the provinces' authority to tax and to collect royalties from the sale and management of their natural resources.
8. That provincial jurisdiction be established over offshore minerals.
9. That the province be given access both to direct and indirect taxes, with the exception of customs and import duties.
10. That the Constitution include provisions that confirm the established legitimate role of the provinces in certain areas of international relations.
11. That communications be included as a concurrent power in the Constitution.
12. That sea coast and inland fisheries be a concurrent power in the Constitution, with provincial paramountcy.
13. That provincial jurisdiction over certain aspects of transportation be strengthened by including transportation as a concurrent power.
14. That culture be included in the Constitution as a concurrent power, with provincial paramountcy.

. . .

16. That forty percent of the members of designated national boards and agencies be appointed by the provinces.
17. That the powers of reservation and disallowance be repealed.
18. That the power of the federal government to declare a work situated within a province's borders to be for the general advantage of Canada or for two or more of the provinces should be used only after the concurrence of the province in which the work is situated.
19. That the federal emergency power be limited so as to ensure that the federal government and Parliament cannot assume responsibility over a broad range of matters not listed within the enumerated heads of Section 91.
20. That limits be placed on Parliament's ability to spend in areas of provincial jurisdiction.
21. That the concept of concurrent jurisdiction be expanded through a provision in the Constitution for the delegation of powers between the federal and provincial governments.
22. That before a delegation of powers is effected, the federal government and the province(s) affected concur.

. . .

(Page 24 from Alberta's position paper "Harmony in Diversity: A New Federalism for Canada." For a more complete analysis see full text available from the CICS.)

. . .

1. SELECTIVE BUT SIGNIFICANT ADJUSTMENTS TO  
THE DISTRIBUTION OF POWERS TO STRENGTHEN  
PROVINCIAL RESPONSIBILITIES FOR ACTIVITIES  
OF LOCAL IMPORTANCE, AND FEDERAL RESPONSIBILITIES  
FOR ECONOMIC AND FISCAL MATTERS OF NATIONAL  
IMPACT,

. . .

(Page 15 from Ontario paper "Opening Statement by the  
Honourable William G. Davis")

. . .

I AM INCLINED TO THINK THAT A LIMITED  
NUMBER OF SELECTED BUT SIGNIFICANT ADJUSTMENTS TO THE  
DISTRIBUTION OF POWERS WOULD GET AT THE ROOT OF MANY  
OF OUR PROBLEMS, AND WOULD IMPROVE THE FUNCTIONING  
OF OUR FEDERATION BY REDUCING A NUMBER OF PERSISTENT  
FRICTIONS. A RESOLUTION OF OUR PROBLEMS WITH THE  
PRESENT ARRANGEMENT OF FEDERAL AND PROVINCIAL POWERS  
SHOULD BE A MATTER OF PRIORITY IN OUR EXAMINATION  
OF THE CONSTITUTION.

. . .

. . .

IT SEEMS TO ME THAT A PROCESS OR FORMULA FOR CONCILIATION SHOULD BE DEVELOPED TO PROVIDE OUR FEDERAL SYSTEM WITH A CONSTRUCTIVE METHOD OF REACHING A MUTUALLY ACCEPTABLE AGREEMENT ON THE USE OF THE SPENDING POWER. IT COULD APPLY AS WELL TO OTHER FEDERAL GENERAL POWERS SUCH AS THE POWER TO DECLARE A MATTER TO BE TO THE GENERAL ADVANTAGE OF CANADA, AND THE EMERGENCY POWER.

. . .

IT MAY BE THAT THE PROCEDURE FOR APPROVING AMENDMENTS TO THE CONSTITUTION, A PROCEDURE WHICH WE ALL SEEK AND WHICH WE MUST HAVE BEFORE OUR CONSTITUTION CAN BE AMENDED ENTIRELY WITHIN CANADA, COULD BE THE PROCEDURE WE CHOOSE TO USE FOR BETTERING FEDERAL-PROVINCIAL RELATIONS IN THIS AREA BY DEVISING CONCILIATORY MECHANISMS ON THESE GENERAL POWERS.

. . .

PROVINCES HAVE SOMETIMES USED THEIR POWERS IN SUCH A WAY AS TO HAVE SERIOUS EFFECTS ON OTHER PARTS OF THE COUNTRY.

. . .

WHEN, IN THOSE HOPEFULLY FEW CASES WHERE SERIOUS NEGOTIATIONS FAIL, AND AS A LAST RESORT, I THINK THAT PROVINCES SHOULD BE GIVEN THE RIGHT TO REFER SUCH MATTERS TO THE SUPREME COURT OF CANADA, A RIGHT WHICH THE FEDERAL GOVERNMENT HAS ALWAYS HAD.

. . .

. . .

AS FAR AS IS HUMANLY POSSIBLE, AND TO MINIMIZE FRICTIONS AMONG US, SUCH GREY AREAS SHOULD BE REMOVED BY IDENTIFICATION AND ASSIGNMENT IN THE CONSTITUTION - EITHER EXCLUSIVELY OR ON A CLEARLY AGREED UPON JOINT BASIS. IN A COMPLEX WORLD, WATERTIGHT COMPARTMENTS ARE NOT POSSIBLE. HOWEVER, CLEARER ARRANGEMENTS CONTAINING FEWER POSSIBILITIES FOR CONFUSION AND MISUNDERSTANDING ARE POSSIBLE, AND INDEED DESIRABLE.

. . .

WHILE THE DISTRIBUTION OF POWERS ITSELF SHOULD BE UNIFORM IN ITS APPLICATION TO EACH PROVINCE, WE SHOULD ENSURE THAT WE INCORPORATE INTO IT TECHNIQUES TO PROVIDE FOR ITS FLEXIBLE OPERATION.

IN THIS REGARD, I AM THINKING OF THE DIFFERENTIATED ADMINISTRATIVE ARRANGEMENTS WORKED OUT BETWEEN THE FEDERAL GOVERNMENT AND THE PROVINCES WITH REGARD TO PROVINCIAL INVOLVEMENT UNDER THE IMMIGRATION ACT.

. . .

. . .

SOME EXTENSION OF THE PRESENT LIST OF CONCURRENT POWERS IS ANOTHER POSSIBILITY OF ACHIEVING GREATER FLEXIBILITY. SUCH AN EXTENSION WITH PARAMOUNTCY ASSIGNED, SEEMS TO ME TO BE ONE REASONABLE AND PRACTICABLE APPROACH WE SHOULD EXAMINE.

FINALLY, IN PURSUIT OF GREATER FLEXIBILITY, I BELIEVE THAT WE SHOULD DISCUSS WHAT MAY BE THE POTENTIALLY PROMISING POSSIBILITY OF DELEGATING LEGISLATIVE AUTHORITY FROM ONE LEVEL TO ANOTHER.

. . .

### III. PROPOSALS

#### 1. AN ECONOMIC UNION

AMONG OUR TOP PRIORITIES, I HOPE THAT WE WOULD INCLUDE THE NEED TO PROVIDE FOR THE FREER MOVEMENT OF GOODS SERVICES, CAPITAL AND PEOPLE THROUGHOUT THE FEDERATION. OTHERWISE, WHAT IS THE MEANING OF LIVING IN ONE COUNTRY?

I WOULD LIKE TO SEE STRONGER CONSTITUTIONAL GUARANTEES OF OUR ECONOMIC UNION.

ONLY THE FEDERAL GOVERNMENT CAN PROVIDE THE POLICIES FOR THE COUNTRY TO REDUCE UNEMPLOYMENT, CONTROL INFLATION, PREVENT STAGNATION, AND ENCOURAGE GROWTH. WE MAY NEED BETTER MECHANISMS FOR PROVINCIAL INPUT INTO FEDERAL POLICIES, BUT IN THE END, THE COUNTRY IS HIGHLY DEPENDENT ON FEDERAL LEADERSHIP AND INITIATIVE. IN REVIEWING THIS MATTER, I WOULD THINK THAT WE MIGHT WANT TO ENSURE THAT ANY CONSTITUTIONAL REVISIONS WILL CONTRIBUTE TO MAKING THE FEDERAL ROLE MORE EFFECTIVE.

. . .

. . . IT IS PARTICULARLY IMPORTANT THAT WE MORE CLEARLY DEFINE THE LIMITS BETWEEN A PROVINCE'S POWERS OVER NATURAL RESOURCES AND SUCH FEDERAL POWERS AS TRADE AND COMMERCE AND TAXATION.

. . .

. . .  
(COMMUNICATIONS)

IN OUR VIEW, THIS IS AN AREA WHERE THERE IS ROOM FOR BOTH ORDERS OF GOVERNMENT TO BE INVOLVED, PARTICULARLY WITH REGARD TO CABLE SYSTEMS. THE CHALLENGE TO US HERE IS TO DEFINE THE RESPECTIVE RESPONSIBILITIES OF EACH ORDER IN SUCH A WAY AS TO ENSURE THAT EACH HAS A DISTINCT ROLE TO PLAY AND THAT THE POSSIBILITIES OF ENTANGLEMENT OR DUPLICATION ARE ABSOLUTELY MINIMIZED.

. . .  
(CULTURE)

ONCE AGAIN THE ISSUE IS NOT WHETHER ONE GOVERNMENT OR OTHER SHOULD HAVE EXCLUSIVE JURISDICTION, BUT OF DEFINING THE AREA IN SUCH A WAY THAT EACH WILL HAVE THEIR OWN PARTICULAR SPHERES OF RESPONSIBILITY.

. . .  
(Pages 1, 3, 5, 6, 8, 12, 13, 14, 17, 18, 19 and 20 from Ontario paper "Distribution of Powers")

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This résumé provides as complete a list as possible of the stands taken by Québec on the federal-provincial division of powers between 1900 and 1976. "Traditional" stands are those formally announced by a member of the government and subsequently reiterated by other spokesmen for Québec.

An attentive examination of Québec's traditional stands brings out the following points:

(1) The scope and regularity of the claims

There has never been a time when Québec did not present its claims. They appear in every era, come from every party, cover every area. No sector of activity has been passed over, from fisheries to urban affairs by way of offshore mineral rights and environmental protection. Québec's dissatisfaction over the division of powers within the Canadian federation is a constant feature of Québec's political landscape.

(2) The same orientation in all claims

There is nothing new in Québec governments asking for enlarged powers for their province. They have always done so, without ever suggesting that certain provincial jurisdictions be relinquished as a quid pro quo. At no time have Québec's spokesmen ever indicated that Québec was willing to bargain, to give up some of its powers in return for recognition of its competence in other sectors. What is more, reaching administrative agreements or renewing sectorial agreements has never made Québec lose sight of the essential: a thorough re-examination of the way in which jurisdictions are divided, and an enlargement of powers for Québec.

(3) The continual reiteration and reformulation of claims

The governments of Québec have apparently never lost patience or lacked imagination. The same requests have been made continually, and are continually reformulated under the pressure of events. Each new intrusion by the federal government provokes an automatic response, but the response has often varied. Tired of calling for a stop to federal interference, Québec's governments have not hesitated to claim total jurisdiction over a disputed sector. Though Québec's claims may change, the pendulum always seems to swing back to the more comprehensive view. A good example of this is the field of taxation. In 1920, Louis-Alexandre Taschereau restricted himself to denouncing federal interference in direct taxation. In 1946,

Maurice Duplessis was already asking that the federal government withdraw from the areas of succession duties and corporate and personal income taxes. It is true that in 1960 Jean Lesage asked only that the federal government withdraw from the area of succession duties, but four years later he was calling for a reconsideration of the whole question of distribution of taxation powers. His successor, Daniel Johnson, took up the question again in 1966, asking for exclusive and priority taxation rights. A year later he proposed the 100% - 100% - 100% formula.

(4) The broadening foundation of the claims

In the earlier years of this century, Québec's stands took the form of criticisms and requests based principally on a deeply-felt indignation and an interpretation of the constitution of 1867. The point of reference for these claims thus essentially remained the BNA Act: Québec sought to ensure that it was respected. As time went on, appeals to the spirit and the letter of the Constitution became less frequent.

The whole range of Québec society's needs and aspirations became the reference points. A great many claims were brought to public attention not as a reaction to this or that intrusion by the federal government but rather as parts of an overall view of the Québec society. In 1971, for instance, the then Minister of Social Affairs, Claude Castonguay, called for a priority competence for Québec in recreation, because this sector complements those of health, the social services and manpower.

A. THE POLITICAL AND CONSTITUTIONAL SECTOR

The Constitution and the Division of Powers

- 1927 - Mr. Taschereau emphasizes that the provinces have to wage a continual struggle to preserve those rights which are theirs. (Federal-Provincial Conference)
- 1935 - Mr. Taschereau considers that certain constitutional amendments are necessary. (Federal-Provincial Conference of the Prime Ministers of the Dominion and the Provinces)
- 1950 - Mr. Duplessis in his turn proposes a realignment of jurisdictions. (Federal-Provincial Constitutional Conference)

- 1967 - Mr. Johnson claims enlarged powers in order to ensure the equality of the French-Canadian nation. ("Confederation of Tomorrow" Conference)
- 1968 - Mr. Johnson reiterates Québec's stand on a redistribution of powers. (Canadian Intergovernmental Conference)
- 1969 - Mr. Bertrand declares that it is vital and urgent to re-examine the question of division of powers. (Constitutional Conference)
- 1969 - Mr. Bertrand repeats his request for distribution of powers. (Fund-raising dinner for the Union nationale)
- 1970 - Mr. Bourassa requests a realignment of jurisdictions in order to increase the efficiency and the linguistic and cultural development of the people of Québec. (Constitutional Conference)
- 1971 - Mr. Bourassa declares that he is absolutely convinced of the need for a new division of powers. (Speech at a fund-raising dinner for the Québec Liberal Party)
- 1971 - Mr. Bourassa requests a reorganization of constitutional powers. (Speech before the members of the Canadian Press)
- 1975-76 Québec once again undertakes constitutional negotiations with the other provinces on a new division of powers. (Constitutional negotiations)

#### Ancillary and Residual Powers

- 1965 - Mr. Lesage requests that the government stop making arbitrary use of its ancillary power to artificially create grey areas. (Federal-Provincial Conference)
- 1967 - Mr. Daniel Johnson requests that the federal government's declaratory power be abolished and that all the powers not expressly entrusted to the central government be given to the provinces. (Confederation of Tomorrow" Conference)
- 1968 - The same request is repeated. (Canadian Intergovernmental Conference)

- 1968 - Mr. Johnson requests an end to federal intervention in provincial affairs through indefinitely extendible powers. (Speech)
- 1975 - Québec proposes a formula which would limit the federal Parliament's ability to exercise its declaratory power and entrust the residual powers to the provinces. (Constitutional negotiations)

#### Québec's International Jurisdiction

- 1965 - Mr. Gérin-Lajoie declares that Québec wants to play a direct international role in those areas over which it has jurisdiction. (Statement before the consular corps)
- 1966 - Mr. Johnson requests that arrangements be made between Ottawa and the provinces regarding borrowing policy in Canada and abroad. (Meeting of the Tax Structure Committee)
- 1967 - Mr. Johnson requests that Québec be allowed to assume full responsibility for decisions affecting the expansion of the Québec community. ("Confederation of Tomorrow" Conference)
- 1968 - Mr. Johnson urgently requests that Québec be given the right to maintain relations abroad and that its right to negotiate and sign agreements and to participate in international conferences be recognized. (Intergovernmental Conference)
- 1970 - Mr. Bourassa requests that certain terms of reference be set up to promote cooperation between the central government and the provinces with respect to foreign relations. (Constitutional Conference)
- 1971 - Mr. Bourassa requests that the international aspects of taxation be made the object of a joint study by the various governments. (Prime Ministers Conference)

### B. THE EDUCATIONAL AND CULTURAL SECTOR

#### Education

- 1920 - Mr. Taschereau denounces federal government interference in public instruction. (Speech)
- 1953 - Mr. Duplessis denounces federal grants to universities as interference. (Tremblay Commission)

- 1957 - Mr. Duplessis has to foil a federal attempt to entrust the national conference of universities with responsibility for distributing federal funds. (Speech)
- 1960 - Québec induces Ottawa to accept a tax transfer formula for university grants. (Speech)
- 1964 - Mr. Lesage claims from the federal government the amounts which it would have devoted to reimbursing the interest on Québec student loans, and requests that the sums paid for school allowances be remitted to Québec in the form of tax points. (Federal-Provincial Conference)
- 1966 - Mr. Johnson denounces federal government intervention in adult education and asserts Québec's rights in continuing education.
- 1966 - Mr. Johnson repeats that the content and organization of courses in all sectors and at every level should fall under provincial jurisdiction. (Meeting of the Tax Structure Committee)
- 1967 - Mr. Johnson states that Québec must gradually assume sole responsibility within its boundaries for any expenditure related to education. ("Confederation of Tomorrow" Conference)
- 1968 - Mr. Johnson denounces Ottawa's assumption of the right to intervene constantly in provincial matters, and mentions, inter alia, educational radio broadcasting. (Union Nationale fund-raising dinner)
- 1968 - Québec requests that education in every form be exclusively under provincial jurisdiction. (Continuing Committee of Officials on the Constitutional Conference)
- 1968 - Mr. Bertrand requests that the federal government withdraw from educational radio broadcasting. (Federal-Provincial Conference)
- 1971 - Mr. Bourassa requests a new distribution of constitutional powers in cultural matters. (Speech in Toronto)
- 1975/ 1976 - Québec proposes that each province be entitled to legislate exclusively in matters related to the arts, letters and the cultural heritage. (Constitutional negotiations)

### CULTURE

- 1961 - Creation of the ministère des Affaires culturelles.
- 1963 - Mr. Lesage states that Québec's right to the development of its language and culture must be recognized, and objects to programmes of activities which do not take into account Québec's priorities. (Speech at the University of Western Ontario)
- 1966 - Mr. Johnson states Québec's desire to assume full responsibility for the cultural development of its citizens and demands approval by Québec of all federal initiatives; he opposes the federal government's distinction between culture and education. (Prime Ministers Conference)
- 1966 - Mr. Johnson states Québec's desire to be in control of its own decisions related to its cultural growth. (Tax Structure Committee)
- 1967 - Mr. Johnson repeats his assertion. ("Confederation of Tomorrow" Conference)
- 1968 - Mr. Johnson claims for French Canadians the right to structures and institutions in accordance with their aspirations and an extension of Québec's jurisdiction. (Canadian Intergovernmental Conference on the Constitution)
- 1971 - Mr. Bourassa expresses the opinion that the cultural factor in Québec justifies decentralization in Canada. (Québec Liberal Party fund-raising dinner)

### COMMUNICATIONS

- 1968 - Mr. Johnson demands immediate jurisdiction over radio and television. (Intergovernmental Conference)
- 1968 - Québec requests shared jurisdiction over radio and television broadcasting as well as the cinema. (Continuing Committee of Officials on the Constitutional Conference)
- 1970 - Mr. Bourassa requests redefinition of the procedures for close cooperation between the central government and the provinces. (Constitutional Conference)

- 1971 - Québec publishes a working paper called "Toward A Québec Communications Policy".
- 1973 - Tabling of a White Paper "Québec, Master Craftsman of its Own Communications Policy".

## C. THE ECONOMIC AND FISCAL SECTOR

### Taxation

- 1920 - Mr. Taschereau denounces federal interference in direct taxation. (Speech - Le Soleil)
- 1927 - Mr. Taschereau demands a precise definition of tax powers. (Tremblay Report)
- 1946 - Mr. Duplessis asks the federal government to withdraw from the field of succession duties, corporation capital and income taxes, and personal income tax. He denounces the tax agreements. (Federal-Provincial Conference)
- 1950 - Mr. Duplessis states that the province must possess the essential powers in taxation. (Federal-Provincial Conference)
- 1955 - Mr. Duplessis repeats his 1950 statement. (Intergovernmental Conference)
- 1960 - Mr. Lesage requests the federal government to abandon the field of succession duties. (Federal-Provincial Conference)
- 1963 - Mr. Lesage requests that the whole redistribution of fiscal powers be reconsidered. (Speech before the Québec Liberal Federation)
- 1964 - Mr. Lesage again requests a new distribution of tax powers. (Federal-Provincial Conference)
- 1965 - Mr. Lesage requests a more equitable sharing of resources between the federal and provincial governments. (Statement)
- 1966 - Mr. Johnson states that Québec could carry out its tasks if the sharing of tax responsibility in the Constitution were not window-dressing. (Tax Structure Committee-September)

- 1966 - Mr. Johnson repeats his statement. (Tax Structure Committee-October)
- 1967 - Mr. Johnson requests for Québec exclusive and overriding tax powers. (Intergovernmental Conference)
- 1968 - Mr. Johnson presses for new arrangements in the sharing of tax fields. (Intergovernmental Conference)
- 1968 - Mr. Johnson recalls his requests regarding a net transfer of fiscal resources. (Speech-Junior Chamber of Commerce)
- 1968 - Québec requests that property tax and succession duties be assigned exclusively to the provinces. (Continuing Committee of Officials on the Constitutional Conference)
- 1968 - Mr. Bertrand states that conditional subsidies, grants and transfers are unacceptable. (Federal-Provincial Conference)
- 1969 - Mr. Bertrand asks for a review of tax resource distribution. (Canadian Constitutional Conference)
- 1970 - Mr. Bertrand repeats his request of the previous year. (Federal-Provincial Conference)
- 1970 - Mr. Bourassa calls for an improvement in fiscal and economic relations before any constitutional reform. (Constitutional Conference)
- 1970 - Mr. Bourassa demands a new tax-sharing arrangement adapted to the needs of the provinces. (speech at the UMQ convention)
- 1971 - Mr. Bourassa points out that better distribution would have enabled Québec to act more quickly and more effectively in its development strategy. (Paris speech)
- 1976 - Mr. Garneau states that a new tax-sharing arrangement is still a basic consideration and must be discussed in upcoming meetings. (Conference of the Ministers of Finance)

### Shared-Cost Programmes and Conditional Grants

- 1920 - Mr. Taschereau denounces the federal proposals for conditional grants in the roads, education and housing sectors. (Le Soleil)
- 1950 - Mr. Duplessis refuses conditional grants for construction of the Trans-Canada Highway. (Commission of Inquiry on Constitutional Problems)
- 1960 - Québec decides to call a halt to shared-cost programmes. (Federal-Provincial Conference)
- 1963 - Mr. Lesage reiterates his opposition to shared-cost programmes involving conditional payments. (Statement at the University of Western Ontario)
- 1964 - Mr. Lesage recalls Québec's earlier stands and claims the financial equivalence of future shared-cost programmes and of programmes in which Québec does not take part. (Federal-Provincial Conference)
- 1966 - Mr. Johnson states Québec's intention to withdraw from the shared-cost programmes and to obtain fair financial compensation. (Tax Structure Committee)
- 1968 - Mr. Johnson declares that federal spending power must be limited to areas of federal jurisdiction. (Intergovernmental Conference)
- 1968 - Québec restates this stand before the Continuing Committee of Officials on the Constitutional Conference.
- 1968 - Mr. Bertrand asks for withdrawal of conditional grants and transfers. (Federal-Provincial Conference)
- 1970 - Mr. Bourassa demands that the federal government cease using its spending power in areas of provincial jurisdiction and requests an improvement in the formula for compensating provinces not taking part in the programmes. (Constitutional Conference)
- 1975/  
1976 - Québec proposes a formula designed to limit and control the exercise of the federal Parliament's spending power. (Constitutional negotiations)

### Environment

- 1970 - Mr. Bertrand states that Québec cannot allow the federal government to act unilaterally to settle the watercourses question. (Federal-Provincial Conference)
- 1971 - Québec calls for a constitutional provision granting the provinces jurisdiction over environmental protection policies. (Constitutional Conference)

### Municipal and Urban Affairs

- 1920 - Québec denounces the federal proposals for conditional grants for housing. (Le Soleil)
- 1968 - Mr. Bertrand asks for the withdrawal of the federal government from the urban development sector. (Federal-Provincial Conference)
- 1968 - Québec requests that municipal organization, town planning, urban development and housing be made the responsibility of the provinces. (Continuing Committee of Officials on the Constitutional Conference)
- 1971 - Mr. Bourassa calls for limitation of the federal role to financing. (Prime Ministers Conference)

### Agriculture

- 1920 - Mr. Taschereau denounces federal interference and asks that sums paid under the Constitution be increased. (Speech)
- 1950 - Mr. Duplessis requests that agriculture be put exclusively under provincial jurisdiction. (Preliminary brief, Federal-Provincial Conference)
- 1963 - Mr. Lesage calls for stable policies in the dairy industry and feed grain supply. (Speech)
- 1968 - Québec calls for concurrent jurisdiction, with federal or provincial predominance as the case may be. (Continuing Committee of Officials on the Constitutional Conference)

### Territorial Development

- 1967 - Mr. Johnson announces his government's intention of

becoming solely responsible for any expenditures for regional development within its boundaries. (Preliminary statement at the "Confederation of Tomorrow" Conference)

- 1968 - Québec requests that territorial development be under the exclusive jurisdiction of the Provinces. (Continuing Committee of Officials on the Constitutional Conference)

### Transport and Roads

- 1920 - Mr. Taschereau denounces federal interference in the roads sector. (Speech - Le Soleil)
- 1927 - Québec announces that it opposes federal grants for road construction. (Tremblay Report)
- 1950 - Québec refuses federal grants for the construction of the Trans-Canada Highway because the agreement does not provide sufficient guarantees to safeguard Québec's rights. (Royal Commission of Inquiry on Constitutional Problems)

### Labour and Manpower

- 1965 - Mr. Lesage declares that Québec intends to set up its own manpower and employment policy even though the federal government is already active in the field, because it is an area of provincial jurisdiction. He requests that the federal measures be modified and the joint programmes and national placement service be re-evaluated. (Federal-Provincial Conference)
- 1967 - Mr. Johnson declares that Québec will gradually become responsible for any expenditures for manpower training or placement within its boundaries and will take over existing federal programmes in that area. ("Confederation of Tomorrow" Conference)
- 1968 - Québec requests that manpower training and placement be handed over to the provinces. (Continuing Committee of Officials on the Constitutional Conference)
- 1971 - Mr. Castonguay requests that the federal government give over primacy of power to legislate or exclusive power to do so in the field of manpower. (Federal-Provincial Conference of Social Welfare Ministers)

D. SOCIAL SECTORHealth and Social Services

- 1920 - Mr. Taschereau denounces federal interference in the field of public welfare. (Speech)
- 1927 - Québec expresses doubts as to the constitutionality of the federal legislation on old age pensions. (Report of the Commission of Inquiry on Constitutional Problems)
- 1945 - Mr. Duplessis denounces federal interference in the field of family allowances. Report of the Commission of Inquiry on Constitutional Problems)
- 1946 - Mr. Duplessis denounces federal interference in the field of health insurance. (Federal-Provincial Conference)
- 1963 - Mr. Lesage asks that Québec administer old age security and requests the necessary means of financing. (Speech at the Reform Club)
- 1965 - Mr. Lesage declares that Québec considers social security under provincial jurisdiction, announces Québec's withdrawal from the social welfare programme proposed by the federal government, objects to federal intrusion in the field of social security and claims that health insurance should fall under provincial jurisdiction. (Federal-Provincial Conference)
- 1967 - Mr. Cloutier recalls that Québec considers health insurance under provincial jurisdiction. (Federal-Provincial Conference of Health Ministers)
- 1967 - Mr. Johnson expresses Québec's wish to make its own decisions in the fields of education, social security and health. ("Confederation of Tomorrow" Conference)
- 1967 - Mr. Johnson declares Québec's intention to assume sole responsibility within its territory for all expenditures related to health, security, old age, and family allowances. ("Confederation of Tomorrow" Conference)
- 1968 - Mr. Cloutier recalls Québec's request for control of an integrated social security system. (Federal-Provincial Conference of Social Welfare Ministers)

- 1968 - Mr. Johnson seeks federal-provincial dialogue on social security. (Canadian Intergovernmental Conference)
- 1968 - Mr. Johnson claims that hospitals and health should fall under provincial jurisdiction and denounces the federal attitude. (Speech to the Union nationale)
- 1968 - Québec request that social security, including family allowances, old age pensions, health and hospitals, be attributed exclusively to the provinces. (Continuing Committee of Officials)
- 1969 - Mr. Bertrand claims that health insurance is a strictly provincial field and that it is up to the provinces to decide when it will be set up. (Speech to B'nai B'rith)
- 1969 - Mr. Bertrand reiterates Québec's traditional stand with respect to social security (Notes for a statement)
- 1970 - Mr. Bourassa claims priority responsibility in matters of health services and social services, and income security. (Constitutional Conference)
- 1971 - Mr. Castonguay seeks priority responsibility in the elaboration of social policy. (Federal-Provincial Conference of Social Welfare Ministers)
- 1971 - Mr. Bourassa seeks a realignment of constitutional powers in the social sector among others. (Speech)
- 1971 - Québec submits a proposal for amending the B.N.A. Act at the Victoria Constitutional Conference. The federal government rejects this and, further to the rejection, Québec refuses to ratify the Victoria Charter.
- 1971 - Mr. Castonguay requests primacy of the power to legislate, or even exclusivity, in matters of social policy. (Federal-Provincial Conference of Social Affairs Ministers)

### Immigration

- 1968 - Québec asks that immigration be under joint jurisdiction with federal or provincial predominance as the case may be, and that integration of immigrants

be under exclusively provincial jurisdiction. (Continuing Committee of Officials on the Constitutional Conference)

- 1970 - Mr. Bourassa asks that terms and conditions be defined for creating close cooperation between the federal government and the provinces. (Constitutional Conference)
- 1975 - Québec and the other provinces seek greater provincial involvement in the sector of immigration. (Inter-provincial talks on the Constitution)

### Justice

- 1950 - Mr. Duplessis seeks establishment of a provincial Court of Appeal which would have the final decision in matters of civil, municipal and school law. (Federal-Provincial Conference)
- 1965 - Mr. Lesage claims that any policy for prisoner rehabilitation undertaken without participation by the provinces is likely to fail. (Federal-Provincial Conference)
- 1975 - Mr. Choquette, in a White Paper entitled "Justice Today", claims that the time has come to review the Constitution in matters of justice.
- 1975 - Québec and the other provinces express concern in the face of the expansion of the Federal Court's field of jurisdiction. (Federal-provincial Conference of Attorneys-General)
- 1976 - Québec and the other provinces again claim provincial jurisdiction over prosecutions in matters of drugs and of violations of the Criminal Code. (Federal-Provincial Conference of Attorneys-General)

### Marriage and Divorce

- 1950 - Mr. Duplessis asks that marriage come under provincial jurisdiction. (Federal-Provincial Conference on the Constitution).
- 1968 - Québec asks that marriage and divorce come under the exclusive jurisdiction of the provinces. (Continuing Committee of Officials on the Constitution)

### Bankruptcy

- 1950 - Mr. Duplessis asks that the federal government exercise its powers without interfering with Québec's Civil Code. (Federal-Provincial Conference on the Constitution)
- 1968 - Québec seeks joint jurisdiction in matters of bankruptcy. (Continuing Committee of Officials)

### Recreation and sports

- 1968 - Québec asks that recreation and sport be placed under exclusively provincial jurisdiction. (Continuing Committee of Officials on the Constitutional Conference)
- 1971 - Mr. Castonguay claims primacy of the power to legislate, or even exclusivity, in the field of recreation. (Federal-Provincial Conference of Social Welfare Ministers)

(Text of Quebec paper "Quebec's Traditional Stands on the Division of Powers (1900 - 1976)

. . .

IT HAS BEEN ARGUED THAT A SIGNIFICANT DECENTRALIZATION OF POWERS TO THE PROVINCIAL LEVEL OR, CONVERSELY, A GREATER CENTRALIZATION OF POWER IN OTTAWA, SHOULD BE INCLUDED IN ANY NEW CONSTITUTIONAL ARRANGEMENT.

I FIND SUCH CONSIDERATIONS DIFFICULT TO CONTEMPLATE. IT HAS BEEN MY PRACTICAL EXPERIENCE, AS A PROVINCIAL PREMIER, THAT BOTH LEVELS OF GOVERNMENT PRESENTLY HAVE ADEQUATE POWERS IN ORDER TO DISCHARGE

THEIR APPROPRIATE RESPONSIBILITIES. QUITE FRANKLY, THE PROBLEM AT BOTH LEVELS OF GOVERNMENT IS, MORE OFTEN THAN NOT, CREATED BY A REFUSAL OR AN INABILITY TO EMPLOY FULLY THE EXISTING CONSTITUTIONAL POWERS WITH SUFFICIENT SKILL AND IMAGINATION. THERE IS, AS WELL, A COVETOUS ATTITUDE ON BEHALF OF ONE LEVEL OF GOVERNMENT TOWARDS THE POWERS OF THE OTHER LEVEL - A CASE OF THE GRASS ALWAYS BEING GREENER ON THE OTHER SIDE OF THE CONSTITUTIONAL FENCE. IT IS MY POINT, AND MY BELIEF, THAT IT IS NOT THE DIVISION OF JURISDICTIONS THAT NEEDS REFORM IN THIS INSTANCE. WHAT IS REALLY NEEDED IS A CHANGE IN SUCH ATTITUDES.

THIS IS NOT TO SAY THAT NEW BRUNSWICK IS NOT PREPARED TO CONSIDER THE TRANSFER OF PARTICULAR RESPONSIBILITIES FROM OTTAWA TO THE PROVINCES OR FROM THE PROVINCES TO OTTAWA. IT IS ONLY TO POINT OUT THAT NEGOTIATIONS ON SUCH MATTERS SHOULD NOT BE BASED ON THE ASSUMPTION THAT AS A WHOLE THE PRESENT DISTRIBUTION IS GREATLY OUT OF BALANCE.

\* \* \*

(Pages 6 and 7 from New Brunswick's paper "Statement by the Honourable Richard Hatfield on the Constitution")

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. . .  
Prince Edward Island has consistently  
advocated that Canada requires a strong central  
government

. . . if this country is to  
avoid perpetually categorizing some of its citizens  
as being less advantaged than others.

. . .  
although Prince Edward Island,  
with few exceptions, is basically satisfied with the  
present division of powers, this province is certainly  
prepared to discuss the concept of the federal government  
delegating authority to the provinces whenever it is  
thought to be necessary or desirable.

. . .  
(Pages 7 and 9 from Prince Edward Island's paper  
"Statement by the Honourable W. Bennett Campbell")

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. . .

"We believe strongly that any changes in our constitution must include provision for a real and meaningful input by the Province into the management of our fishing resource and we are prepared to accept the costs proportionate to our involvement as well as any revenues involved. Serious consideration should be given to attaining concurrent jurisdiction in this sector with provincial paramountcy. "

. . .

"Mr. Chairman, we also believe strongly that in the development of a new constitution, the control of the continental margin should rest with the Province."

. . .

(Pages 4 and 5 from Newfoundland paper "Opening Statement by the Honourable Frank D. Moores")

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An Agenda for Change: notes for comments  
by the Prime Minister at the Constitutional  
Conference, Tuesday, October 31, 1978

As I said at the outset of the Conference, and as many of the Premiers have stressed as well, there is an urgent need to demonstrate to our fellow-countrymen (and to ourselves) that early progress can be made on important constitutional questions. As Mr. Lalonde has just shown, the total task of constitutional renewal is complicated in the extreme. There are so many subjects to be dealt with, and so many factors to be taken into consideration. We have a major task in front of us and I will look forward to hearing your thoughts on how best to organize the work.

For my part, it seems to me that we will need to put in place some kind of special and effective arrangement to enable our joint effort to go forward as rapidly as possible over the next couple of years. It would also seem essential, if early progress is to be achieved, that some sort of a priority list be prepared which can serve both as a guideline and an objective for the next few months. It is with these thoughts in mind that I would like to offer for your consideration a mechanism, and an "agenda for change".

### A mechanism

We could establish a Constitutional Committee which would meet frequently in the short term and regularly over the months thereafter. It could be made up of the Intergovernmental Affairs Ministers and the Attorneys General, and would be assisted by officials. The Ministers in question could be joined, as appropriate, by their various colleagues as particular powers came under study. We could each arrange matters so that rapid Cabinet consideration could be given to points of contention, even in the course of ministerial meetings, so that the decision-making process could be reduced from months to weeks.

### An agenda for change

We could try to reach agreement in principle, at this conference, on a number of high priority changes in the distribution of powers. These items could then be the subject of intensive work by the Constitutional Committee, so that detailed proposals, which our responsible ministers would hopefully have concurred in, could be ready for consideration and decision at our next conference on the Constitution, say, in January 1979. We could also decide upon a second priority list, or ask the Constitutional Committee to develop one, so

that work could be put in train on the many other items which we will wish to study together. We ask only one thing in return: that you and your governments commit yourselves to rapid progress on those other aspects of constitutional renewal which we will discuss later, and to achieving a broad measure of agreement with us in those other areas.

To underline our commitment, and also to help in the setting of the priority list to which I have just referred, I wish to make specific proposals to the conference. These proposals are drawn from the lists which you, Premiers, have conveyed to me through Premier Lougheed's letter of October 1976 and Mr. Blakeney's letter of August 1978. Their selection has also been influenced by the views -- and I might add in most cases, the strong views -- which some of you have individually expressed in our correspondence. Finally, they reflect the federal government's own assessment of what changes, among those you have proposed, are not only desirable, but also achievable over coming months.

#### FIRST

I propose that we agree in principle, at this conference, to seek an appropriate method to place limits on the use of the federal spending power. Provincial governments have argued for years that the unrestricted use of this

power by the federal government creates difficulties for the provinces. The federal government recognized as long as a decade ago that the limitation of this federal power would be in keeping with the spirit of Canadian federalism; and our recent budgetary difficulties have further reminded us that the lack of constitutional restriction on the federal power to spend is not always an unmixed blessing. I therefore put it to you that in this, as in other areas, the time for action has come. Subject to your agreement, I am willing to direct federal representatives on the Constitutional Committee to devise, in conjunction with your representatives, appropriate restrictions on the use of the federal spending power for payments to other governments and also to institutions and persons, where payments to those might significantly affect the affairs of provincial governments. I would assume that the provincial governments will also be willing to consider comparable limitations on their spending power when its use significantly affects the affairs of the federal government.

The only caveat that I would make on this proposal is that, in our view, restrictions upon the federal spending power should not deprive us of effective means to achieve such national goals as equal treatment of Canadians, regardless of their residence, and alleviation of disparities among provinces and regions.

## SECOND

I therefore propose that we agree in principle, at this conference, that the constitutional obligations of the federal Parliament regarding equalization and regional development be made explicit - indeed, more explicit than in our original proposals of last June. This has been a long-standing concern of the less affluent provinces, particularly in the Atlantic region. I was also encouraged to note that the more affluent provinces have explicitly or implicitly supported the concept of benefit-sharing for all through the federal government. Provinces might also wish to consider how best their own responsibilities for reducing disparities within each province, between areas and municipalities, might be expressed in the Constitution.

## THIRD

I propose that we agree in principle to devise a constitutional provision which would meet provincial concerns about the possible abuse of the federal declaratory power. There is the view expressed by the Premiers in the "1976 consensus" and there is also your new proposal, Premier Bennett, in this regard. I suggest that we instruct our representatives on the Constitutional Committee to come up with a procedure which might be acceptable to us all. In saying that, however, I want to make it clear that I

think there must be some means by which the interest of the total Canadian community can be protected if, at some future time, a provincial government were to act in a way that would be quite contrary to the interests of the country as a whole. We have to envisage undesirable possibilities at a provincial level just as much as at the national level!

#### FOURTH

I suggest that we agree in principle to revive the proposal made in 1969 by the federal government that provincial legislatures be allowed, within certain limits, to levy indirect as well as direct taxes. There was consensus at your meeting in Regina that "formal access of the provinces to the field of indirect taxation" is a matter "requiring early consideration" and I would agree that the time for action has come. The only conditions that I must make, as Prime Minister of the whole federation, are that the relevant constitutional provision be so drafted as to ensure that provincial taxation would not create impediments to interprovincial and international trade, and drafted in such a way as to substantially confine the burden of each province's taxes within its borders.

## FIFTH

I propose that we agree in principle to clarify the respective powers of federal and provincial authorities in respect of:

- the control, management and taxation of natural resources;
- the control and regulation of interprovincial and international trade.

The object, of course, being to ensure that both orders of government can acquit themselves of their responsibilities effectively, and that a fair share of the benefits from natural resources accrue to the people of the province where they are found, without depriving other Canadians of a reasonable share of these benefits. This is an aspect of the distribution of powers on which you, Premier Blakeney, and you, Premier Lougheed, hold strong views. Accordingly, I suggest that we and our colleagues not only agree to talk about it, but also try on an urgent basis to resolve the issue.

## SIXTH

I propose that we agree in principle to remove constitutional impediments to the unification of family law under provincial jurisdiction. This is an area of

social policy in which your government, Premier Lévesque, and yours, Mr. Davis, have a keen interest. Moreover, most attorneys-general have encountered difficulties in their efforts to modernize and make more progressive our concepts and approaches to family law, difficulties that are hard to overcome within the existing constitutional framework. To facilitate these much-needed reforms within the provincial sphere, the federal government is therefore willing to consider substantial changes to its jurisdiction over marriage and divorce.

#### SEVENTH

I propose that we agree in principle that the broad field of communications is one in which both orders of government have reasonable and legitimate interests. The present Constitution as interpreted by our highest courts over the years seems to assign almost the entire field to the Parliament of Canada. We believe, however, that today's reality and the future as we can best foresee it require a more varied approach. There are many aspects of the field which would seem to be of clear national significance. There are other aspects where the significance is more of a local nature. We believe a renewed Constitution should reflect this and that we should try to work out together new constitutional

arrangements, satisfactory to both orders of government.

Because of the complexities of the field and because of its rapidly developing technology, it will likely be difficult for us in the months which lie immediately ahead to reach final conclusions on how a new constitutional provision should look in the overall. We think nevertheless that there may be some matters within the field on which we could reach early agreement, and I propose, therefore, that communications be added to the list of items for early and urgent attention.

I put forward these proposals for the early agenda of the Constitutional Committee, as I also put forward the important matters raised in Bill C-60, including the question of Rights and Freedoms, and the question of the Supreme Court. Indeed, I would hope the Constitutional Committee would be able to examine all these matters as well as the Constitutional Amending Formula before our next Conference. Much detailed work needs to be done on these various aspects of constitutional renewal -- rights, powers and institutions. The "mix" I have just suggested was chosen because of my conviction that, with good will on all sides, it can be used to demonstrate to Canadians that constitutional renewal can really begin to take place.

Finally, I stress that the above proposals do not exhaust the federal government's views on the distribution of powers. There are many areas where we will be ready to consider new arrangements to enable the provinces to better serve the people. There are other areas where we will ask that adjustments to the federal Parliament's jurisdiction be considered, so that it, too, may promote more effectively the interests and well-being of all Canadians. The federal government would hope that items from both categories would be included on the second priority list which I have suggested we draw up. As I have said many times before, everything is "discussable" and negotiable, as long as we are talking about arrangements that fit within a true federation.

I now look forward to hearing your own proposals, and your reactions to the suggestions I have just made.

(Text of federal paper "An Agenda for Change: notes for Comments by the Prime Minister of Canada")

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. . .

"From the federal government's point of view there are problems which we should like to see addressed, not only in some of the fields you have mentioned at Regina, but in the following fields as well:

- emergency powers in the economic field;
- non-tariff barriers to interprovincial and international trade;
- jurisdiction in foreign affairs;
- regulation of competition;
- interprovincial telephone and telecommunications movements;
- interprovincial and international movements, including the rights of passage, of electricity, and of oil, gas and other minerals;
- the problem of jurisdiction over minimum wages;
- marketing boards;
- regulation of the Canadian securities industry; and
- the right or obligation to make expenditures to reduce regional disparities."

. . .

(Page 7 from federal paper "Notes for Opening Comments on Distribution of Powers by the Honourable Marc Lalonde")



SUPREME COURT



# XI. SUPREME COURT

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B.N.A. ACT

General Court  
of Appeal, etc.

**101.** The Parliament of Canada may, notwithstanding anything in this Act, from Time to Time provide for the Constitution, Maintenance, and Organization of a General Court of Appeal for Canada, and for the Establishment of any additional Courts for the better Administration of the Laws of Canada. (46)

VICTORIA CHARTER (1971)

PART IV

SUPREME COURT OF CANADA

**Art. 22.** There shall be a general court of appeal for Canada to be known as the Supreme Court of Canada.

**Art. 23.** The Supreme Court of Canada shall consist of a chief justice to be called the Chief Justice of Canada, and eight other judges, who shall, subject to this Part, be appointed by the Governor General in Council by letters patent under the Great Seal of Canada.

**Art. 24.** Any person may be appointed a judge of the Supreme Court of Canada who, after having been admitted to the Bar of any Province, has, for a total period of at least ten years, been a judge of any court in Canada or a barrister or advocate at the Bar of any Province.

**Art. 25.** At least three of the judges of the Supreme Court of Canada shall be appointed from among persons who, after having been admitted to the Bar of the Province of Quebec, have, for a total period of at least ten years, been judges of any court of that Province or of a court established by the Parliament of Canada or barristers or advocates at that Bar.

**Art. 26.** Where a vacancy arises in the Supreme Court of Canada and the Attorney General of Canada is considering a person for appointment to fill the vacancy, he shall inform the Attorney General of the appropriate Province.

Art. 27. When an appointment is one falling within Article 25 or the Attorney General of Canada has determined that the appointment shall be made from among persons who have been admitted to the Bar of a specific Province, he shall make all reasonable efforts to reach agreement with the Attorney General of the appropriate Province, before a person is appointed to the Court.

Art. 28. No person shall be appointed to the Supreme Court of Canada unless the Attorney General of Canada and the Attorney General of the appropriate Province agree to the appointment, or such person has been recommended for appointment to the Court by a nominating council described in Article 30, or has been selected by the Attorney General of Canada under Article 30.

Art. 29. Where after the lapse of ninety days from the day a vacancy arises in the Supreme Court of Canada, the Attorney General of Canada and the Attorney General of a Province have not reached agreement on a person to be appointed to fill the vacancy, the Attorney General of Canada may inform the Attorney General of the appropriate Province in writing that he proposes to convene a nominating council to recommend an appointment.

Art. 30. Within thirty days of the day when the Attorney General of Canada has written the Attorney General of the Province that he proposes to convene a nominating council, the Attorney General of the Province may inform the Attorney General of Canada in writing that he selects either of the following types of nominating councils:

- (1) a nominating council consisting of the following members: the Attorney General of Canada or his nominee and the Attorneys General of the Provinces or their nominees;
- (2) a nominating council consisting of the following members: the Attorney General of Canada or his nominee, the Attorney General of the appropriate Province or his nominee and a Chairman to be selected by the two Attorneys General, and if within six months from the expiration of the thirty days they cannot agree on a Chairman, then the Chief Justice of the appropriate Province or if he is unable to act, the next senior judge of his court, shall name a Chairman;

and if the Attorney General of the Province fails to make a selection within the thirty days above referred to, the Attorney General of Canada may select the person to be appointed.

Art. 31. When a nominating council has been created, the Attorney General of Canada shall submit the names of not less than three qualified persons to it about whom he has sought the agreement of the Attorney General of the appropriate Province to the appointment, and the nominating council shall recommend therefrom a person for appointment to the Supreme Court of Canada; a majority of the members of a council constitutes a quorum, and a recommendation of a majority of the members at a meeting constitutes a recommendation of the council.

Art. 32. For the purpose of Articles 26 to 31 "appropriate Province" means, in the case of a person being considered for appointment to the Supreme Court of Canada in compliance with Article 25, the Province of Quebec, and in the case of any other person being so considered, the Province to the Bar of which such person was admitted, and if a person was admitted to the Bar of more than one Province, the Province with the Bar of which the person has, in the opinion of the Attorney General of Canada, the closest connection.

Art. 33. Articles 26 to 32 do not apply to the appointment of the Chief Justice of Canada when such appointment is made from among the judges of the Supreme Court of Canada.

Art. 34. The judges of the Supreme Court of Canada hold office during good behaviour until attaining the age of seventy years, but are removable by the Governor General on address of the Senate and House of Commons.

Art. 35. The Supreme Court of Canada has jurisdiction to hear and determine appeals on any constitutional question from any judgment of any court in Canada and from any decision on any constitutional question by any such court in determining any question referred to it, but except as regards appeals from the highest court of final resort in a Province, the Supreme Court of Canada may prescribe such exceptions and conditions to the exercise of such jurisdiction as may be authorized by the Parliament of Canada.

Art. 36. Subject to this Part, the Supreme Court of Canada shall have such further appellate jurisdiction as the Parliament of Canada may prescribe.

Art. 37. The Parliament of Canada may make laws conferring original jurisdiction on the Supreme Court of Canada in respect of such matters in relation of the laws of Canada as may be prescribed by the Parliament of Canada, and authorizing the reference of questions of law or fact to the Court and requiring the Court to hear and determine the questions.

Art. 38. Subject to this Part, the judgment of the Supreme Court of Canada in all cases is final and conclusive.

Art. 39. Where a case before the Supreme Court of Canada involves questions of law relating to the civil law of the Province of Quebec, and involves no other question of law, it shall be heard by a panel of five judges, or with the consent of the parties, four judges, at least three of whom have the qualifications described in Article 25, and if for any reason three judges of the Court who have such qualifications are not available, the Court may name such ad hoc judges as may be necessary to hear the case from among the judges who have such qualifications serving on a superior court of record established by the law of Canada or of a superior court of appeal of the Province of Quebec.

Art. 40. Nothing in this Part shall be construed as restricting the power existing at the commencement of this Charter of a Provincial Legislature to provide for or limit appeals pursuant to its power to legislate in relation to the administration of justice in the Province.

Art. 41. The salaries, allowances and pensions of the judges of the Supreme Court of Canada shall be fixed and provided by the Parliament of Canada.

Art. 42. Subject to this Part, the Parliament of Canada may make laws to provide for the organization and maintenance of the Supreme Court of Canada, including the establishment of a quorum for particular purposes.

## SPECIAL JOINT COMMITTEE ON THE CONSTITUTION (1972)

44. The existence, independence and structure of the Supreme Court of Canada should be provided for in the Constitution.
45. Consultation with the Provinces on appointments to the Supreme Court of Canada must take place. We generally support the methods of consultation proposed in the Victoria Charter, but the Provinces should also be allowed to make nominations to the nominating councils which would be set up under the Victoria proposals if the Attorney-General of Canada and the Attorney General of a province fail to agree on an appointee.
46. The Provinces should be given the right to withdraw appeals in matters of strictly provincial law from the Supreme Court of Canada and to vest final decision on such matters in their own highest courts, thus leaving to the Supreme Court of Canada jurisdiction over matters of Federal law and of constitutional law, including the Bill of Rights. The issue of whether a matter was one of strictly provincial law would be subject to determination by the Supreme Court of Canada.

## DRAFT PROCLAMATION (1976)

### Part II

#### Supreme Court of Canada

Art. 8 There shall be a general court of appeal for Canada to be known as the Supreme Court of Canada.

Art. 9 The Supreme Court of Canada shall consist of a chief justice to be called the Chief Justice of Canada, and eight other judges, who shall, subject to this Part, be appointed by the Governor General in Council by letters patent under the Great Seal of Canada.

Art. 10 Any person may be appointed a judge of the Supreme Court of Canada who, after having been admitted to the Bar of any Province, has, for a total period of at least ten years, been a judge of any court in Canada or a barrister or advocate at the Bar of any Province.

Art. 11 At least three of the judges of the Supreme Court of Canada shall be appointed from among persons who, after having been admitted to the Bar of the Province of Quebec, have, for a total period of at least ten years, been judges of any court of that Province or of a court established by the Parliament of Canada or barristers or advocates at that Bar.

Art. 12 Where a vacancy arises in the Supreme Court of Canada and the Attorney General of Canada is considering a person for appointment to fill the vacancy, he shall inform the Attorney General of the appropriate Province.

Art. 13 When an appointment is one falling within Article II or the Attorney General of Canada has determined that the appointment shall be made from among persons who have been admitted to the Bar of a specific Province, he shall make all reasonable efforts to reach agreement with the Attorney General of the appropriate Province, before a person is appointed to the Court.

Art. 14 No person shall be appointed to the Supreme Court of Canada unless the Attorney General of Canada and the Attorney General of the appropriate Province agree to the appointment, or such person has been recommended for appointment to the Court by a nominating council described in Article 16, or has been selected by the Attorney General of Canada under Article 16.

Art. 15 Where after the lapse of ninety days from the day a vacancy arises in the Supreme Court of Canada, the Attorney General of Canada and the Attorney General of a Province have not reached agreement on a person to be

appointed to fill the vacancy, the Attorney General of Canada may inform the Attorney General of the appropriate Province in writing that he proposes to convene a nominating council to recommend an appointment.

Art. 16 Within thirty days of the day when the Attorney General of Canada has written the Attorney General of the Province that he proposes to convene a nominating council, the Attorney General of the Province may inform the Attorney General of Canada in writing that he selects either of the following types of nominating councils:

- (1) a nominating council consisting of the following members: the Attorney General of Canada or his nominee and the Attorneys General of the Provinces or their nominees;
- (2) a nominating council consisting of the following members: the Attorney General of Canada or his nominee, the Attorney General of the appropriate Province or his nominee and a Chairman to be selected by the two Attorneys General, and if within six months from the expiration of the thirty days they cannot agree on a Chairman, then the Chief Justice of the appropriate Province, or if he is unable to act, the next senior Judge of his court, shall name a Chairman;

and if the Attorney General of the Province fails to make a selection within the thirty days above referred to, the Attorney General of Canada may select the person to be appointed.

Art. 17 When a nominating council has been created, the Attorney General of Canada shall submit the names of not less than three qualified persons to it about whom he has sought the agreement of the Attorney General of the appropriate Province to the appointment, and the nominating council shall recommend therefrom a person for appointment to the Supreme Court of Canada; a majority of the members of a council constitutes a quorum, and a recommendation of a majority of the members at a meeting constitutes a recommendation of the council.

Art. 18 For the purpose of Articles 12 to 17 "appropriate Province" means, in the case of a person being considered for appointment to the Supreme Court of Canada in compliance with Article 11, the Province of Quebec, and in the case of any other person being so considered, the Province to the Bar of which such a person was admitted, and if a person was admitted to the Bar of more than one Province, the Province with the Bar of which the person has, in the opinion of the Attorney General of Canada, the closest connection.

Art. 19 Articles 12 to 18 do not apply to the appointment of the Chief Justice of Canada when such appointment is made from among the judges of the Supreme Court of Canada.

Art. 20 The judges of the Supreme Court of Canada hold office during good behaviour until attaining the age of seventy years, but are removable by the Governor General on address of the Senate and House of Commons.

Art. 21 The Supreme Court of Canada has jurisdiction to hear and determine appeals on any constitutional question from any judgment of any court in Canada and from any

decision on any constitutional question by any such court in determining any question referred to it, but except as regards appeals from the highest court of final resort in a Province, the Supreme Court of Canada may prescribe such exceptions and conditions to the exercise of such jurisdiction as may be authorized by the Parliament of Canada.

Art. 22 Subject to this Part, the Supreme Court of Canada shall have such further appellate jurisdiction as the Parliament of Canada may prescribe.

Art. 23 The Parliament of Canada may make laws conferring original jurisdiction on the Supreme Court of Canada in respect of such matters in relation of the laws of Canada as may be prescribed by the Parliament of Canada, and authorizing the reference of questions of law or fact to the court and requiring the court to hear and determine the questions.

Art. 24 Subject to this Part, the judgment of the Supreme Court of Canada in all cases is final and conclusive.

Art. 25 Where a case before the Supreme Court of Canada involves questions of law relating to the civil law of the Province of Quebec, and involves no other question of law, it shall be heard by a panel of five judges, or with the consent of the parties, four judges, at least three of whom have the qualifications described in Article 11, and if for any reason three judges of the court who have such qualifications are not available, the court may name such *ad hoc* judges as may be necessary to hear the case from among the judges who have such qualifications serving on a superior court of record established by the law of Canada or of a superior court of appeal of the Province of Quebec.

Art. 26 Nothing in this Part shall be construed as restricting the power existing at the commencement of this Proclamation of a Provincial Legislature to provide for or limit appeals pursuant to its power to legislate in relation to the administration of justice in the Province.

Art. 27 The salaries, allowances and pension of the judges of the Supreme Court of Canada shall be fixed and provided by the Parliament of Canada.

Art. 28 Subject to this Part, the Parliament of Canada may make laws to provide for the organization and maintenance of the Supreme Court of Canada, including the establishment of a quorum for particular purposes.

Art. 29 The court existing on the day of the coming into force of this Proclamation under the name of the Supreme Court of Canada shall continue as the Supreme Court of Canada, and the judges thereof shall continue in office as though appointed under this Part except that they shall hold office during good behaviour until attaining the age of seventy-five years, and until otherwise provided pursuant to the provisions of this Part, all laws pertaining to the court in force on that day shall continue, subject to the provisions of this Proclamation.

## PREMIERS' CONFERENCES (1976)

- c) Supreme Court of Canada - In general, discussions on this topic developed from those articles found in Part II of the draft proclamation. The provinces unanimously agreed to a greater role for the provinces in the appointment of Supreme Court judges than provided for in the draft proclamation. In addition, a number of other modifications were suggested to the provisions found in the draft proclamation. (Extract from letter of October 14, 1976 from the Premier of Alberta to the Prime Minister of Canada)

## BRITISH COLUMBIA PAPER ON THE CONSTITUTION OF CANADA (NOV 1976)

**(b) *The Supreme Court of Canada***—The *Supreme Court Act*, R.S.C. 1970 s-19, is the present federal legislation which governs the Constitution, maintenance, and organization of the Supreme Court of Canada. The only provision in that Act which sets out the requirement for regional representation is that at least three of the Judges shall be appointed from the Bench or the Bar of the Province of Quebec. However, the practice invariably has been for a great many years that, because Quebec is legally entitled to three Supreme Court Judges, Ontario is likewise entitled to the same number as the other dominant provincial partner in Canada.

Since the 1949 amendments which increased the Court's size to nine, the practice has variably been to have at all times three members of the Court appointed from Quebec, three members from Ontario, one member from the Maritime Provinces, and the remaining two members of the Court from the four western provinces. The last member on the Court from British Columbia was appointed on June 3, 1947, and retired on attaining the age of 75 on September 16, 1962. If past practice is followed, the next western appointee to the Court will be from British Columbia, but not until 1982.

It is no longer acceptable to British Columbia that the first and second largest of Canada's provinces should at all times each have three Judges on the Supreme Court of Canada from those Provinces, whereas the third-largest Province, British

Columbia, rarely has one. It is manifestly unfair to British Columbia to only expect one appointment approximately every 35 years, whereas the Provinces of Quebec and Ontario at all times each have three Judges on the Court.

It was quite reasonable in 1875, when the Supreme Court of Canada was established, to have four of the six Judges from the Provinces of Ontario and Quebec. As is stated above, at that date Saskatchewan and Alberta did not exist and Manitoba was very small. The total population of Manitoba, British Columbia, and North West Territories in 1871 was 3 per cent of the total of Canada. It was not surprising, therefore, that the West was only given one seat out of six on the Court.

The map of Canada has dramatically changed since that date. British Columbia believes that those changes ought to be reflected in representation on the Supreme Court of Canada. It is our proposal that the Court be increased to 10 Judges and that at all times at least one of the Judges be appointed from the Bar or the Bench of the Province of British Columbia, two Judges appointed from among the three Prairie Provinces, three from Ontario, three from Quebec, and one from the Atlantic Provinces.

(Pages 6 and 7 from November 1976 British Columbia paper "What is British Columbia's Position on the Constitution of Canada")

DRAFT RESOLUTION (1977)

## No proposal

In his letter to the Premiers accompanying the Draft Resolution, the Prime Minister of Canada stated the following regarding the Supreme Court:

So far as the Supreme Court of Canada is concerned, the Victoria Charter contained a number of specific articles dealing with the procedure to be followed in making appointments to the Court. They would have given the provinces a limited but explicit role in the appointment process. In your letter you indicated that, at the October meeting, the provincial Premiers agreed that the provinces should have a greater role in this process than was accorded to them by the Victoria provisions, although your letter does not detail what that greater role should be. You said that "a number of other modifications were suggested" to the Victoria provisions.

The federal government, for its part, has also had some second thoughts about the articles agreed to at Victoria. We reached the conclusion that they appear to have sufficiently adverse implications for the Supreme Court, as a vital institution of our federation, that they ought not simply to be reintroduced as part of this current proposal without at least a very careful re-examination of those implications by all of our governments. We also concluded that it would be possible to achieve a better regional distribution of the judges, as well as more effective consultation, through a constitutional provision that would require selection of the judges on a geographical basis. This would ensure that a regional distribution is invariably present on the Court. It would, of course, retain and guarantee constitutionally the presence on the Court of at least three judges experienced in the civil law of Quebec. We would welcome the views of the Premiers on a new provision of this kind, combined with a constitutional obligation to consult with the Attorney General of the province or provinces concerned before an appointment was made.

# BILL C-60 (1978)

## *(b) The Supreme Court of Canada*

Supreme Court  
of Canada

**101.** There shall be a general court of appeal for Canada called the Supreme Court of Canada.

Constitution of  
Supreme Court

**102.** The Supreme Court of Canada shall consist of a chief justice, to be called the Chief Justice of Canada, and ten other judges, who shall be appointed respectively by the Governor General of Canada in the manner provided in this division.

Eligibility of  
persons for  
appointment

**103.** Any person is eligible to be appointed as a judge of the Supreme Court of Canada who, after having been admitted to the bar of any province or territory of Canada, has, for a total period of at least ten years, been a judge of any court in Canada or a barrister or advocate at the bar of any such province or territory, except that a person is eligible to be appointed as a judge of the Supreme Court of Canada from Quebec only if, after having been admitted to the bar of Quebec, that person has, for a total period of at least ten years, been a judge of any court of that province or of a court established by the Parliament of Canada or an advocate at the bar of Quebec.

Appointment of  
judges from  
provinces

**104.** Of the eleven judges of the Supreme Court of Canada, four shall be appointed from Quebec, and the remaining seven shall be appointed from among provinces or territories of Canada other than Quebec but so as to ensure at all times, as nearly as reasonably may be, membership in the Court of a judge or judges appointed from among the Atlantic provinces, from Ontario, from among the Western provinces exclusive of British Columbia, and from British Columbia.

**101-115.** The Bill would constitutionalize the Supreme Court of Canada by removing the principal provisions relating to the establishment of the Court from the *Supreme Court Act* (the S.C. Act) and, for the first time, including them within the Constitution and providing for their entrenchment. The provisions would have effect when the Bill becomes law. (See s. 133 and the Introduction hereto, category 1(2).)

Changes would be made in the jurisdiction and composition of the Court and in the method of appointment of judges for the purpose of better reflecting the regional and federal nature of Canada and the importance of having questions relating to the civil law of Quebec determined by judges trained in that law.

**101.** This section would reconstitute the Court. It is new but derives from the present s. 101 and s. 3 of the S.C. Act (amended in Schedule A hereto).

**102-103.** These new sections replace ss. 4 and 5 of the S.C. Act (repealed in Schedule A hereto). They would increase the size of the Court from nine to eleven judges and continue the present ten-year judicial or legal experience qualification for appointment (expanded in the Bill to include experience as a county, district or provincial court judge.)

**104-105.** These new sections would formalize the present informal practice of regional appointments to the Court by requiring that four judges be appointed from Quebec and the remaining seven be appointed from the Atlantic provinces, Ontario, the western provinces other than British Columbia, and British Columbia, respectively. At present the only regional requirement is that three judges be from Quebec. (See s. 6 of the S.C. Act (repealed in Schedule A hereto).)

Interpretation

105. For the purposes of section 104,

- (a) the term "Atlantic provinces" means Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland, and the term "Western provinces" means Manitoba, British Columbia, Saskatchewan and Alberta; and
- (b) a person shall be considered to be from a particular province if that person has been admitted to the bar of that province, and if that person has been admitted to the bars of two or more provinces or to the bars of one or more provinces and one or more territories of Canada, he or she shall be considered to be from the province or territory with which, in the opinion of the Attorney General of Canada, he or she has the closest connection.

Method of appointment of judges

106. (1) No person shall be appointed to fill any vacancy arising in the Supreme Court of Canada until such time as that person has been nominated for appointment thereto in accordance with the procedure prescribed by this section and such nomination has been affirmed by the House of the Federation in accordance with section 107.

Procedure on vacancy arising in Court

(2) Where a vacancy arises in the Supreme Court and the Attorney General of Canada is considering the nomination of a person for appointment from a province (hereinafter called the "particular province") to fill the vacancy, he shall forthwith so inform the Attorney General of the particular province.

Nominations for appointment

(3) No person shall be nominated for appointment to fill a vacancy in the Supreme Court unless the Attorney General of Canada and the Attorney General of the particular province agree to the nomination, or such person has been recommended by a nominating council described in subsection (5) or has been selected by the Attorney General of Canada under that subsection.

106-108. These new sections would limit for the first time the power of the federal government to appoint judges of the Court.

106. This section provides for federal-provincial consultation respecting the appointment of judges to the Court and for resolving deadlock, by means of a nominating council, where agreement cannot be reached.

Where no  
agreement on  
nomination

(4) Where ten days have elapsed since the day the Attorney General of Canada informed the Attorney General of the particular province in accordance with subsection (2), and the Attorney General of Canada and the Attorney General of the particular province have not reached agreement on a person to be nominated for appointment after having made all reasonable efforts to reach such agreement, the Attorney General of Canada shall inform the Attorney General of the particular province by notice in writing that he proposes to convene a nominating council to recommend the nomination of a person for appointment.

Selection of  
nominating  
council

(5) Within ten days of the day the Attorney General of Canada gives notice in writing to the Attorney General of the particular province that he proposes to convene a nominating council, the Attorney General of the particular province may inform the Attorney General of Canada by notice in writing that he selects either of the following types of nominating councils:

(a) a nominating council consisting of the following members: the Attorney General of Canada or his nominee, and the Attorneys General of each of the provinces or their nominees;

(b) a nominating council consisting of the following members: the Attorney General of Canada or his nominee, the Attorney General of the particular province or his nominee, and a chairman to be named by the two Attorneys General, and if within fourteen days from the expiration of the ten days herein referred to they cannot agree on a chairman, then the Chief Justice of the particular province or if he is unable to act, the next senior judge of his court, shall name a chairman;

and if the Attorney General of the particular province fails to make a selection under this subsection within the ten days herein referred to, the Attorney General of Canada may select the person to be nominated.

Recommendation by  
nominating  
council

(6) Where a nominating council has been established under subsection (5), the Attorney General of Canada shall forthwith submit to it the names of not less than three persons qualified under this division to be appointed to fill the vacancy and about whom he has sought the agreement of the Attorney General of the particular province to their nomination for such appointment, and the nominating council shall not later than fourteen days after the submission to it

of those names recommend therefrom a person for such nomination; a majority of the members of the council shall constitute a quorum thereof and a recommendation of a majority of its members at a meeting convened for the purpose shall constitute a recommendation of the council.

**Interpretation** (7) For the purposes of this section, words importing a male person include a female person.

**Notice of nomination to be given to Speaker of House of the Federation**

**107. (1)** Where a person has been nominated for appointment to the Supreme Court of Canada in accordance with section 106, the Attorney General of Canada shall forthwith give notice in writing of the nomination to the Speaker of the House of the Federation, who shall on receipt of such notice cause a copy thereof to be laid before the House or, if the House is not then sitting, to be sent to each member of the House in such form and manner as the Speaker deems most expeditious.

**Action to be taken by House of the Federation**

**(2)** Within the first fourteen days that the House of the Federation is sitting next after a copy of a notice of a nomination has been laid before the House or sent to its members pursuant to subsection (1), the House of the Federation shall debate the matter of the nomination, and if at the conclusion of the debate the nomination is not affirmed by a majority of the members of the House of the Federation voting thereon, the nomination shall not be proceeded with and the vacancy in the Supreme Court shall in that case be dealt with as though it had arisen at that time, but if the House of the Federation fails to vote on the nomination within the fourteen days referred to herein or if a majority of the members of that House voting thereon favour its affirmation, the nomination shall be deemed to be affirmed by that House.

**Rule for avoidance of delay**

**(3)** Notwithstanding subsection (2), if on the day a copy of a notice of a nomination is sent by the Speaker of the House of the Federation to its members pursuant to subsection (1), that House stands adjourned or prorogued to a day that is more than twenty-one days after that day, the requirements of subsection (2) for a debate on the matter of the nomination need not be complied with, and the House of the Federation shall be deemed to have affirmed the nomination, if fewer than ten members thereof request such a debate by notice in writing communicated to the Speaker within those twenty-one days.

**107. Section 107 recognizes the interests of all regions in Supreme Court appointments by requiring the affirmation of appointments by the House of the Federation. In order to avoid undue delay in appointments, it is provided that, if the House is not and will not soon be sitting, appointments shall be deemed to be affirmed unless ten or more members of the House request a debate.**

Appointment of  
Chief Justice of  
Canada

**108.** Sections 106 and 107 do not apply to the appointment of the Chief Justice of Canada when such appointment is made from among the judges of the Supreme Court of Canada.

Tenure of office  
of judges of  
Supreme Court

**109.** The judges of the Supreme Court of Canada shall hold office during good behaviour until they attain the age of seventy years, but are removable by the Governor General of Canada on address of the House of the Federation and the House of Commons of Canada.

Salaries,  
allowances and  
pensions of  
judges of  
Supreme Court

**110.** The salaries, allowances and pensions of the judges of the Supreme Court of Canada shall be fixed and provided by the Parliament of Canada.

Appellate  
jurisdiction of  
Supreme Court

**111. (1)** Subject to this division, the Supreme Court of Canada shall have such appellate jurisdiction as may be prescribed by the Parliament of Canada.

Questions  
relating to civil  
law of Quebec

**(2)** Where any case before the Supreme Court of Canada involves a question of law relating to the civil law of Quebec, that question shall be decided solely by those judges of the Supreme Court who are judges appointed from Quebec; a majority of the judges of the Court appointed from Quebec shall constitute a quorum for the decision of any such question and a decision of a majority of the judges of the Court appointed from Quebec on any such question shall constitute a decision of the Supreme Court thereon.

Jurisdiction of  
Supreme Court  
with respect to  
appeals or  
decisions on  
constitutional  
questions

**112. (1)** Notwithstanding any other provision of this division, the Supreme Court of Canada has jurisdiction to hear and determine appeals on any constitutional question from any judgment of any court in Canada and from any decision on any constitutional question by any such court in determining any question referred to it, but except as regards any such appeals from the highest court of final resort in or for a province, the Supreme Court of Canada may prescribe such exceptions and conditions to the exercise of such jurisdiction as may be authorized by the Parliament of Canada.

**108.** An appointment of a Chief Justice from among existing judges would not require consultation or affirmation.

**109.** This section would continue the present security of tenure of office provided by s. 9 of the S.C. Act (repealed in Schedule A hereto) but would reduce the retirement age of new appointees from seventy-five to seventy years. (See s. 144 as regards present judges.)

**110.** This new section would establish an express constitutional basis for the judges' salaries, allowances and pensions at present provided for in the *Judges Act*.

**111. (1)** This new provision derives from the present s. 101 and expresses in more explicit terms the constitutional basis for the provisions of the S.C. Act setting out the appellate jurisdiction of the Court. (See ss. 35 to 45 of the S.C. Act.)

**(2)** This new provision would require judges from Quebec (i.e. those trained in civil law) to be the sole judges of questions relating to Quebec civil law.

**112.** New. The Supreme Court would have jurisdiction to hear appeals on constitutional questions but would also be able to choose not to exercise that jurisdiction in certain cases where so authorized by Parliament or where it considers a question not to be of sufficient public importance to warrant decision by the Court.

Discretion of  
Court

(2) Where, with respect to any appeal from any judgment or decision on any constitutional question of the highest court of final resort in or for a province, the Supreme Court is of the opinion that the question involved therein is not of sufficient public importance that it ought to be decided by the Supreme Court, or for any other reason, is of such a nature or significance as not to warrant decision by it, the Court may refuse to hear such appeal.

Interpretation

(3) For the purposes of this section, the term "province" includes the Yukon Territory and the Northwest Territories.

Original  
jurisdiction of  
Supreme Court;  
references of  
questions of law  
or fact

113. The Parliament of Canada may make laws conferring original jurisdiction on the Supreme Court of Canada in respect of such matters in relation to the laws of Canada as may be prescribed by the Parliament of Canada, and authorizing the reference of questions of law or fact to the Court and requiring the Court to hear and determine such questions.

Judgments of  
Supreme Court

114. The judgment of the Supreme Court of Canada in all cases is final and conclusive.

Organization  
and maintenance  
of  
Supreme Court  
and rules for  
regulating  
procedure

115. Subject to this division, the Parliament of Canada may make laws

(a) providing for the organization and maintenance of the Supreme Court of Canada and making additional provisions respecting the judges of the Court and provisions for the appointment of and otherwise respecting *ad hoc* judges, and for the establishment of quorums for particular purposes, and

(b) authorizing the judges of the Supreme Court of Canada or a majority of them to make general rules and orders for regulating the procedure of and in the Court and the bringing of cases before it from courts appealed from or otherwise, and for the effectual execution and working of any laws respecting the Supreme Court and the attainment of their intention and objects with respect to the Court.

113. New. This section affirms the authority of Parliament to confer on the Court original jurisdiction in respect of matters of federal law (i.e. to determine a federal question that comes to it directly rather than on appeal to it). It would also establish an express constitutional basis for s. 55 of the S.C. Act which provides for direct references to the Court on important questions of law or fact (usually constitutional questions raised by the federal or a provincial government). (See s. 55 of the S.C. Act.)

114. This section is new. (But see s. 54 of the S.C. Act which at present provides that judgments of the Court are final.)

115. This section, which provides for the organization and maintenance of the Supreme Court, is new but derives from the present s. 101 and from s. 103 of the S.C. Act (amended in Schedule A hereto).

## REGINA PREMIERS' CONFERENCE (1978)

The Premiers agreed to advance the 1976 consensus which included a consensus regarding the Supreme Court of Canada.  
(Communiqué)

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In its role as arbiter of the constitution governing all governments, the Supreme Court of Canada must be a court of the whole federation, not of the central government alone. For this reason, the jurisdiction of the Court and the procedures to nominate and appoint its judges should be entrenched in the constitution. Moreover, the court system in Canada should continue to be a single, hierarchical structure with the Supreme Court of Canada at the top as the general appeal court for the whole country.

The Governor-General-in-Council should appoint the judges of the Supreme Court of Canada, and the Superior, District and County Courts of each province, but only after full and formal consultation with the provinces. The procedures of this consultation should be set out in the Constitution.

As regional concerns would be expressed through this consultative process, members of the Supreme Court should be selected on the basis of ability regardless of their geographical origin. The sole exception to this principle should be the judges of the Province of Quebec; because of the unique character of its Civil Code, a minimum number of judges on the Court from Quebec should be guaranteed by the Constitution.

. . .  
(Page 6 from Ontario paper "A Restatement of Ontario's Views on Canada and the Constitution")

LAMONTAGNE/MACGUIGAN REPORT (OCTOBER 1978)

No proposal

## CONSTITUTIONAL CONFERENCE (1978)

NOTE: The source of each extract is shown at the end in brackets.

. . .

### Summary of Proposals

The Government of British Columbia recommends:

- (1) The existence, composition and jurisdiction of the Supreme Court of Canada should be provided for in the Constitution so that these attributes of the Court will not be subject to unilateral change by either level of government.
- (2) There should be a three-stage procedure for appointments to the Supreme Court of Canada:
  - (a) Consultation between the federal government and the government of the province to decide upon the proposed nominee;
  - (b) Nomination by the Federal Government;
  - (c) Confirmation by a reconstituted Senate.
- (3) The Supreme Court of Canada should be composed of eleven members. Membership should be based primarily on merit but should be drawn from all the five regions of Canada.
- (4) The Supreme Court of Canada should continue to exercise final appellate jurisdiction in constitutional *and* nonconstitutional cases.
- (5) The Supreme Court of Canada should continue to exercise final appellate jurisdiction in relation to both federal statutes and provincial statutes.

(Page 20 from "British Columbia's Constitutional Proposals, Paper No. 4 - Reform of the Supreme Court of Canada." For a more complete analysis see full text available from the CICS.)

. . .

15. That a representative constitutional court be established to resolve constitutional issues.

. . .

(Page 24 from Alberta's position paper "Harmony in Diversity: A New Federalism for Canada." For a more complete analysis see full text available from the CICS.)

. . .

IN 1976, THE TEN PREMIERS AGREED THAT THE PROVINCES SHOULD PLAY AN ACTIVE PART IN THE APPOINTMENT OF JUSTICES TO THE SUPREME COURT OF CANADA. ONTARIO THINKS THAT THE BODY WHICH INTERPRETS DISPUTES BETWEEN GOVERNMENTS SHOULD BE APPOINTED THROUGH A PROCESS OF ACTIVE COLLABORATION AMONG THE ELECTED REPRESENTATIVES OF THE ELEVEN GOVERNMENTS. IN ADDITION, WE BELIEVE THAT THE PROCESS SHOULD BE STRAIGHTFORWARD AND WORKABLE.

ACCORDINGLY, WE RECOMMEND THAT THE GOVERNOR GENERAL-IN-COUNCIL SHOULD APPOINT JUSTICES TO THE SUPREME COURT OF CANADA FROM A LIST OF CANDIDATES DRAWN UP BY A NATIONAL JUDICIAL NOMINATING COUNCIL. THIS COUNCIL WOULD BE COMPOSED OF THE ATTORNEYS GENERAL OF THE PROVINCES AND THE ATTORNEY GENERAL OF CANADA.

IN 1971, IN VICTORIA, THE FIRST MINISTERS AGREED THAT THE SUPREME COURT OF CANADA BE COMPOSED OF NINE JUSTICES. ONTARIO CONTINUES TO SUPPORT THIS PROPOSAL. THREE OF THE JUSTICES SHOULD BE APPOINTED FROM THE PROVINCE OF QUEBEC WITH THE REMAINING SIX JUSTICES APPOINTED AT LARGE WITHOUT CONSIDERATION OF REGIONAL RATIOS.

. . .

. . .

WE HAVE THUS AVOIDED THE COMPLEXITIES AND EXPENSE OF A DUAL COURT SYSTEM. THIS CONCEPT SHOULD BE PRESERVED BY ENTRENCHING IN THE CONSTITUTION THE JURISDICTION OF THE SUPREME COURT OF CANADA AS THE COURT OF FINAL APPEAL.

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(Pages 2 and 3 from Ontario paper "The Courts")

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. . .

THERE ARE NATIONAL OBJECTIVES AND THERE ARE NATIONAL PROBLEMS WHICH CAN ONLY BE EFFECTIVELY DEALT WITH BY NATIONAL INSTITUTIONS. IT IS INARGUABLE THAT EACH AND EVERY CANADIAN, IN WHATEVER CANADIAN PROVINCE, HAS NATIONAL INTERESTS, NATIONAL CONCERNS AND A SENSE OF NATIONAL CITIZENSHIP WHICH ONLY OUR FEDERAL INSTITUTIONS CAN SATISFY.

IT FOLLOWS, THEN, THAT I, FOR ONE, AM CONCERNED BY THE WEAKENING OF OUR NATIONAL INSTITUTIONS BY THE EMPHASIS UPON INCREASING REGIONAL FACTIONALISM WHICH IS A COMMON THREAD RUNNING THROUGH THE FEDERAL AND SOME PROVINCIAL PROPOSALS RELATING TO THE SUPREME COURT OF CANADA AND THE HOUSE OF THE FEDERATION.

. . .

. . .

I BELIEVE STRONGLY THAT NATIONAL ISSUES MUST BE THE RESPONSIBILITY OF STRONG NATIONAL INSTITUTIONS. SUCH WILL ULTIMATELY BEST SERVE THE INTERESTS OF EVERY PROVINCE. IF, HOWEVER, OUR NATIONAL INSTITUTIONS ARE TO BECOME MERELY REPRESENTATIVE OF REGIONAL GROUPS AND FACTIONS AND ARE, INDEED, MANDATED TO DO SO, THEN THEY ARE ONLY TOO LIKELY TO BE DOMINATED AND REPRESENTATIVE OF THE LARGER REGIONS OF CANADA TO THE ULTIMATE DETRIMENT OF PROVINCES SUCH AS NEW BRUNSWICK.

. . .

(Pages 5 and 6 from New Brunswick's paper "Statement by the Honourable Richard Hatfield on the Constitution")

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. . .

Most proposals for the Supreme Court that are described in the federal bill are generally acceptable to us.

. . .

(Page 13 from Prince Edward Island's paper "Statement by the Honourable W. Bennett Campbell")



## JUDICATURE



## XII. JUDICATURE

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## B.N.A. ACT

92. 14. The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.

### VII.—JUDICATURE.

96. The Governor General shall appoint the Judges of the Superior, District, and County Courts in each Province, except those of the Courts of Probate in Nova Scotia and New Brunswick.

Appointment of Judges.

97. Until the laws relative to Property and Civil Rights in Ontario, Nova Scotia, and New Brunswick, and the Procedure of the Courts in those Provinces, are made uniform, the Judges of the Courts of those Provinces appointed by the Governor General shall be selected from the respective Bars of those Provinces.

Selection of Judges in Ontario, etc.

98. The Judges of the Courts of Quebec shall be selected from the Bar of that Province.

Selection of Judges in Quebec.

99. (1) Subject to subsection two of this section, the Judges of the Superior Courts shall hold office during good behaviour, but shall be removable by the Governor General on Address of the Senate and House of Commons.

Tenure of office of Judges.

(2) A Judge of a Superior Court, whether appointed before or after the coming into force of this section, shall cease to hold office upon attaining the age of seventy-five years, or upon the coming into force of this section if at that time he has already attained that age. (44A)

Termination at age 75.

100. The Salaries, Allowances, and Pensions of the Judges of the Superior, District, and County Courts (except the Courts of Probate in Nova Scotia and New Brunswick), and of the Admiralty Courts in Cases where the Judges thereof are for the Time being paid by Salary, shall be fixed and provided by the Parliament of Canada. (45)

Salaries etc., of Judges.

101. The Parliament of Canada may, notwithstanding anything in this Act, from Time to Time provide for the Constitution, Maintenance, and Organization of a General Court of Appeal for Canada, and for the Establishment of any additional Courts for the better Administration of the Laws of Canada. (46)

General Court of Appeal, etc.

VICTORIA CHARTER (1971)

## PART V

## COURTS OF CANADA

Art. 43. The Parliament of Canada may, notwithstanding anything in the Constitution of Canada, from time to time provide for the constitution, maintenance, and organization of courts for the better administration of the laws of Canada, but no court established pursuant to this Article shall derogate from the jurisdiction of the Supreme Court of Canada as a general court of appeal for Canada.

SPECIAL JOINT COMMITTEE ON THE CONSTITUTION (1972)

No proposal

DRAFT PROCLAMATION (1976)

No proposal

## PREMIERS' CONFERENCES (1976)

No proposal

## DRAFT RESOLUTION (1977)

No proposal

## BILL C-60 (1978)

- 92.** 14. The administration of justice in the province, including the constitution, maintenance, and organization of provincial courts, both of civil and of criminal jurisdiction, and including procedure in civil matters in those courts.

### XI THE COURTS AND JUDICIARY

#### *(a) General*

Independence  
of the judiciary

**100.** The principle of the independence of the judiciary under the rule of law and in consonance with the supremacy of the law is a fundamental principle of the Constitution of Canada.

**100.** This new section expresses in statutory form the present fundamental principle of the independence of the judiciary. It is reinforced by ss. 109 and 119 which would continue the present security of tenure of office of judges. Section 100 would take effect federally and provincially and become entrenched in the same manner as s. 96. (See s. 132 and the Introduction hereto, category 2.)

(c) *Courts for Better Administration of Laws of Canada*

Constitution of courts for better administration of laws of Canada

**116.** The Parliament of Canada may, notwithstanding anything in the Constitution of Canada, from time to time provide for the constitution, maintenance and organization of courts for the better administration of the laws of Canada, but no law providing for the constitution, maintenance or organization of any such court shall derogate from the jurisdiction of the Supreme Court of Canada as a general court of appeal for Canada.

(d) *Appointment and Tenure of Office of Judges and their Salaries, Allowances and Pensions*

Appointment of judges of superior, district and county courts

**117.** The Governor General of Canada shall appoint the judges of the superior, district and county courts in each province, except those of the courts of probate in Nova Scotia and New Brunswick.

Selection of judges appointed by Governor General of Canada

**118.** (1) Until the laws relative to property and civil rights in all of the provinces other than Quebec, and the procedure of the courts in those provinces, are made uniform, the judges of the courts in those provinces appointed by the Governor General of Canada shall be selected from the respective bars of those provinces.

Selection of judges of courts of Quebec

(2) The judges of the courts of Quebec shall be selected from the bar of that province.

Tenure of office of judges of superior courts

**119.** The judges of the superior courts of the provinces shall hold office during good behaviour until they attain the age of seventy years, but are removable by the Governor General of Canada on address of the House of the Federation and the House of Commons of Canada.

Salaries, allowances and pensions of judges generally

**\*120.** The salaries, allowances and pensions of the judges of the superior, district and county courts in each province (except the courts of probate in Nova Scotia and New Brunswick) shall be fixed and provided by the Parliament of Canada.

**116.** This section is the present s. 101 modified. It would continue the present authority of Parliament to establish courts to handle matters relating to federal law (e.g. the Federal Court of Canada).

**117.** This section is, in substance, the present s. 96. It would authorize the Governor General to continue to make the same judicial appointments to courts in the various provinces as are at present made by the Governor General.

**118.** This section, which is the present s. 97 modified and the present s. 98, would require federally appointed judges for a province to be chosen from among members of the bar of the province.

**119.** This section modifies the present s. 99. It would continue the security of tenure of judges of superior courts but would lower the retirement age of new appointees from seventy-five to seventy years. (See s. 145 as regards present judges.)

**120.** This section is, in substance, the present s. 100. It forms the constitutional basis for the judges' salaries, allowances and pensions at present provided for in the *Judges Act*.

Designated provisions: approval of additional measures to be taken when agreed

125. The enactment of this Act by the Parliament of Canada does not extend to any following provision (in this Part referred to as a "designated provision") set out in Part I of this Act, namely:

- (a) section 31,
- (b) section 33,
- (c) sections 35 to 40,
- (d) sections 79 to 95,
- (e) sections 97 to 99,
- (f) section 120, and
- (g) sections 121 to 123;

and the inclusion in this Act of any designated provision does not constitute an assertion by the Parliament of Canada of authority to enact any such provision; but in order that effect may be given as soon as may be to each such designated provision as part of the Constitution of Canada, it is hereby declared and directed that, on and after the commencement of this Act and by virtue of its enactment by the Parliament of Canada, both Houses of the Parliament of Canada shall be deemed to have approved of resolutions for the amendment of the Constitution of Canada in the form and to the effect of each of those provisions, each of which resolutions may be taken up and dealt with, either severally or in combination with any other or others of them, by action as on a joint address or by proclamation, as the case may be, as and when it or they may lawfully be so taken up and dealt with in accordance with the procedure for such amendment then recognized by accepted usage, if there is then no procedure for that purpose expressly provided for by the Constitution of Canada, or in accordance with the procedure for that purpose expressly so provided for, if there is then such a procedure.

Amendment of designated provisions not precluded

126. Nothing in section 125 shall be construed as precluding the amendment of any designated provision, including, but without limiting the generality of that expression, any designated provision set out in sections 91 to 95, before such time as any resolution with respect thereto that is deemed by section 125 to have been approved by both Houses of the Parliament of Canada is taken up and dealt with as provided in that section.

125. This section provides for the coming into effect of the designated provisions. (See the Introduction hereto, categories 4 and 5.)

126. This section emphasizes the possibility of amendment to any designated section before it is entrenched pursuant to s. 125.

REGINA PREMIERS' CONFERENCE (1978)

The Premiers agreed upon the following:

... full and formal consultation with the provinces in appointments to the Superior, District and County Courts of the provinces. (Extract from Communiqué)

. . .

---

The Governor-General-in-Council should appoint the judges of the Supreme Court of Canada, and the Superior, District and County Courts of each province, but only after full and formal consultation with the provinces. The procedures of this consultation should be set out in the Constitution.

. . .

(Page 6 from Ontario paper "A Restatement of Ontario's Views on Canada and the Constitution")

LAMONTAGNE/MACGUIGAN REPORT (OCTOBER 1978)

No proposal

# CONSTITUTIONAL CONFERENCE (1978)

NOTE: The source of each extract is shown at the end in brackets.

. . .

15. That a representative constitutional court be established to resolve constitutional issues.

. . .

(Page 24 from Alberta's position paper "Harmony in Diversity: A New Federalism for Canada." For a more complete analysis see full text available from the CICS.)

. . .

FINALLY, I WOULD URGE THAT WE GIVE CONSIDERATION TO THE APPOINTMENT OF JUDGES OF THE SUPERIOR, COUNTY AND DISTRICT COURTS OF THE PROVINCES BY THE LIEUTENANT GOVERNOR-IN-COUNCIL. SUCH PROVINCIAALLY APPOINTED JUDGES WOULD CONTINUE TO HEAR CASES INVOLVING MATTERS OF FEDERAL AND PROVINCIAL LAW.

(Page 4 from Ontario paper "The Courts")



TERRITORIAL AND OTHER ELEMENTS OF THE FEDERATION



### XIII. TERRITORIAL AND OTHER ELEMENTS OF THE FEDERATION

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## B.N.A. ACT

### II.—UNION.

Declaration of  
Union.

3. It shall be lawful for the Queen, by and with the Advice of Her Majesty's Most Honourable Privy Council, to declare by Proclamation that, on and after a Day therein appointed, not being more than Six Months after the passing of this Act, the Provinces of Canada, Nova Scotia, and New Brunswick shall form and be One Dominion under the Name of Canada; and on and after that Day those Three Provinces shall form and be One Dominion under that Name accordingly. (3)

Construction of  
subsequent  
Provisions of  
Act.

4. Unless it is otherwise expressed or implied, the Name Canada shall be taken to mean Canada as constituted under this Act. (4)

Four Provinces.

5. Canada shall be divided into Four Provinces, named Ontario, Quebec, Nova Scotia, and New Brunswick. (5)

6. The Parts of the Province of Canada (as it exists at the passing of this Act) which formerly constituted respectively the Provinces of Upper Canada and Lower Canada shall be deemed to be severed, and shall form Two separate Provinces. The Part which formerly constituted the Province of Upper Canada shall constitute the Province of Ontario; and the Part which formerly constituted the Province of Lower Canada shall constitute the Province of Quebec.

Provinces of  
Ontario and  
Quebec.

7. The Provinces of Nova Scotia and New Brunswick shall have the same Limits as at the passing of this Act.

Provinces of  
Nova Scotia  
and New  
Brunswick.  
Decennial  
Census.

Seat of  
Government of  
Canada.

16. Until the Queen otherwise directs, the Seat of Government of Canada shall be Ottawa.

Seats of  
Provincial  
Governments.

68. Unless and until the Executive Government of any Province otherwise directs with respect to that Province, the Seats of Government of the Provinces shall be as follows, namely,—of Ontario, the City of Toronto; of Quebec, the City of Quebec; of Nova Scotia, the City of Halifax; and of New Brunswick, the City of Fredericton.

Power to admit  
Newfoundland,  
etc., into the  
Union.

**146.** It shall be lawful for the Queen, by and with the Advice of Her Majesty's Most Honourable Privy Council, on Addresses from the Houses of the Parliament of Canada, and from the Houses of the respective Legislatures of the Colonies or Provinces of Newfoundland, Prince Edward Island, and British Columbia, to admit those Colonies or Provinces, or any of them, into the Union, and on Address from the Houses of the Parliament of Canada to admit Rupert's Land and the North-western Territory, or either of them, into the Union, on such Terms and Conditions in each Case as are in the Addresses expressed and as the Queen thinks fit to approve, subject to the Provisions of this Act; and the Provisions of any Order in Council in that Behalf shall have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland. (66)

## RUPERT'S LAND ACT (1868)

### RUPERT'S LAND ACT, 1868

31-32 VICTORIA, CHAPTER 105

(This Act was repealed by the Statute Law Revision Act, 1893, 56-57 Vict., c. 14.)

**An Act for enabling Her Majesty to accept a Surrender upon Terms of the Lands, Privileges, and Rights of "The Governor and Company of Adventurers of England trading into Hudson's Bay," and for admitting the same into the Dominion of Canada**

[31st July, 1868.]

*Whereas by certain Letters Patent granted by His late Majesty King Charles the Second in the Twenty-second Year of His Reign certain Persons therein named were incorporated by the Name of "The Governor and Company of Adventurers of England trading into Hudson's Bay," and certain Lands and Territories, Rights of Government, and other Rights, Privileges, Liberties, Franchises, Powers, and Authorities, were thereby granted or purported to be granted to the said Governor and Company in His Majesty's Dominions in North America:*

Recital of  
Charter of  
Hudson's  
Bay Com-  
pany, 22,  
c. 2.

And whereas by the British North America Act, 1867, it was (amongst other things) enacted that it should be lawful for Her Majesty, by and with the Advice of Her Majesty's most Honourable Privy Council, on Address from the Houses of the Parliament of Canada, to admit Rupert's Land and the North-Western Territory, or either of them, into the Union on such Terms and Conditions as are in the Address expressed and as Her Majesty thinks fit to approve, subject to the provisions of the said Act:

And whereas for the Purpose of carrying into effect the Provisions of the said British North America Act, 1867, and of admitting Rupert's Land into the said Dominion as aforesaid upon such Terms as Her Majesty thinks fit to approve, it is expedient that the said Lands, Territories, Rights, Privileges, Liberties, Franchises, Powers, and Authorities, so far as the same have been lawfully granted to the said Company, should be surrendered to Her Majesty, Her Heirs and Successors, upon such Terms and Conditions as may be agreed upon by and between Her Majesty and the said Governor and Company as hereinafter mentioned:

Recital of Agreement of surrender.

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:—

1. This Act may be cited as Rupert's Land Act, 1868.

Short title.

2. For the Purposes of this Act the Term "Rupert's Land" shall include the whole of the Lands and Territories held or claimed to be held by the said Governor and Company.

Definition of "Rupert's Land"

Power to Her Majesty to accept Surrender of Lands, etc., of the Company upon certain Terms.

3. It shall be competent for the said Governor and Company to surrender to Her Majesty, and for Her Majesty by any Instrument under Her Sign Manual and Signet to accept a Surrender of all or any of the Lands, Territories, Rights, Privileges, Liberties, Franchises, Powers, and Authorities whatsoever granted or purported to be granted by the said Letters Patent to the said Governor and Company within Rupert's Land, upon such Terms and Conditions as shall be agreed upon by and between Her Majesty and the said Governor and Company; provided, however, that such Surrender shall not be accepted by Her Majesty until the Terms and Conditions upon which Rupert's Land shall be admitted into the said Dominion of Canada shall have been approved of by Her Majesty, and embodied in an Address to Her Majesty from both the Houses of the Parliament of Canada in pursuance of the One hundred and forty-sixth Section of the British North America Act, 1867; and that the said Surrender and Acceptance thereof shall be null and void unless within a Month from the Date of Such Acceptance Her Majesty does by Order in Council under the Provisions of the said last recited Act admit Rupert's Land into the said Dominion; provided further, that no Charge shall be imposed by such Terms upon the Consolidated Fund of the United Kingdom.

Extinguish-  
ment of all  
Rights of the  
Company.

4. *Upon the Acceptance by Her Majesty of such Surrender all Rights of Government and Proprietary Rights, and all other Privileges, Liberties, Franchises, Powers, and Authorities whatsoever, granted or purported to be granted by the said Letters Patent to the said Governor and Company within Rupert's Land, and which shall have been so surrendered, shall be absolutely extinguished; provided that nothing herein contained shall prevent the said Governor and Company from continuing to carry on in Rupert's Land or elsewhere Trade and Commerce.*

Power to  
Her Majesty  
by Order in  
Council to  
admit Ru-  
pert's Land  
into and  
form Part of  
the Domin-  
ion of  
Canada.

5. *It shall be competent to Her Majesty by any such Order or Orders in Council as aforesaid, on Address from the Houses of Parliament of Canada, to declare that Rupert's Land shall, from a Date to be therein mentioned, be admitted into and become Part of the Dominion of Canada; and thereupon it shall be lawful for the Parliament of Canada from the Date aforesaid to make, ordain, and establish within the Land and Territory so admitted as aforesaid all such Laws, Institutions, and Ordinances, and to constitute such Courts and Officers, as may be necessary for the Peace, Order, and good Government of Her Majesty's Subjects and others therein: Provided that, until otherwise enacted by the said Parliament of Canada, all the Powers, Authorities, and Jurisdiction of the several Courts of Justice now established in Rupert's Land, and of the several Officers thereof, and of all Magistrates and Justices now acting within the said Limits, shall continue in full force and effect therein.*

Jurisdiction  
of present  
Courts and  
Officers con-  
tinued.

## BRITISH NORTH AMERICA ACT (1871)

### THE BRITISH NORTH AMERICA ACT, 1871<sup>(1)</sup>

34-35 VICTORIA, CHAPTER 28

An Act respecting the establishment of Provinces in the Dominion of Canada

[29th June, 1871.]

WHEREAS doubts have been entertained respecting the powers of the Parliament of Canada to establish Provinces in Territories admitted, or which may hereafter be admitted, into the Dominion of Canada, and to provide for the representation of such Provinces in the said Parliament, and it is expedient to remove such doubts, and to vest such powers in the said Parliament:

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited for all purposes as the British North America Act, 1871. Short title.

2. The Parliament of Canada may from time to time establish new Provinces in any territories forming for the time being part of the Dominion of Canada, but not included in any Province thereof, and may, at the time of such establishment, make provision for the constitution and administration of any such Province, and for the passing of laws for the peace, order, and good government of such Province, and for its representation in the said Parliament.<sup>(2)</sup> Parliament of Canada may establish new Provinces and provide for the constitution, etc., thereof.

Alteration of limits of Provinces.

3. The Parliament of Canada may from time to time, with the consent of the Legislature of any Province of the said Dominion, increase, diminish, or otherwise alter the limits of such Province, upon such terms and conditions as may be agreed to by the said Legislature, and may, with the like consent, make provision respecting the effect and operation of any such increase or diminution or alteration of territory in relation to any Province affected thereby.

Parliament of Canada may legislate for any territory not included in a Province.

4. The Parliament of Canada may from time to time make provision for the administration, peace, order, and good government of any territory not for the time being included in any Province.

Confirmation of Acts of Parliament of Canada, 32-33 Vict. (Canadian), c. 3; 33 Vict. (Canadian), c. 3.

5. The following Acts passed by the said Parliament of Canada, and intituled respectively,—“An Act for the temporary government of Rupert’s Land and the North Western Territory when united with Canada”; and “An Act to amend and continue the Act thirty-two and thirty-three Victoria, chapter three, and to establish and provide for the government of the Province of Manitoba,” shall be and be deemed to have been valid and effectual for all purposes whatsoever from the date at which they respectively received the assent, in the Queen’s name, of the Governor General of the said Dominion of Canada.

Limitation of powers of Parliament of Canada to legislate for an established Province.

6. Except as provided by the third section of this Act, it shall not be competent for the Parliament of Canada to alter the provisions of the last-mentioned Act of the said Parliament in so far as it relates to the Province of Manitoba, or of any other Act hereafter establishing new Provinces in the said Dominion, subject always to the right of the Legislature of the Province of Manitoba to alter from time to time the provisions of any law respecting the qualification of electors and members of the Legislative Assembly, and to make laws respecting elections in the said Province.<sup>(3)</sup>

VICTORIA CHARTER (1971)

Art. 20. Until modified under the authority of the Constitution of Canada, Canada consists of ten Provinces, named Ontario, Quebec, Nova Scotia, New Brunswick, Manitoba, British Columbia, Prince Edward Island, Saskatchewan, Alberta and Newfoundland, two Territories, named the Northwest Territories and the Yukon Territory, and such other territory as may at any time form part of Canada.

SPECIAL JOINT COMMITTEE ON THE CONSTITUTION (1972)

No reference

DRAFT PROCLAMATION (1976)

No reference

## PREMIERS' CONFERENCES (1976)

The Premiers unanimously agreed that the creation of new provinces should be subject to any amending formula consensus. (Extract from letter of October 14, 1976 from the Premier of Alberta to the Prime Minister of Canada)

## DRAFT RESOLUTION (1977)

Art. 24            Before the Parliament of Canada may establish any new province in territories forming part of Canada, the question of the establishment of such province shall be placed on the agenda of a conference composed of the Prime Minister of Canada and the First Ministers of the Provinces for discussion by them.

# BILL C-60 (1978)

Institutional  
elements of  
Canadian  
federation

**\*31.** The Canadian federation under the name of Canada declared and affirmed to be continued by this Act shall be composed of

(a) the federal authority in and for Canada, which shall consist of and be constituted by the Parliament of Canada and the executive government of and over Canada, as hereinafter provided;

(b) the authorities of the political divisions styled provinces by this Act and known respectively as Ontario, Quebec, Nova Scotia, New Brunswick, Manitoba, British Columbia, Prince Edward Island, Saskatchewan, Alberta and Newfoundland, each being a constituent element of the Canadian federation, constituted as provided in this Act and by its constitution; and

(c) the territories known respectively as the Yukon Territory and the Northwest Territories.

Territorial  
limits of  
Canada

**32.** The territorial limits of Canada shall include, in addition to the provinces and territories described in paragraphs 31(b) and (c), all other territory for the time being forming part of Canada but not included in any province or territory described in either of those paragraphs.

Territorial  
limits of  
provinces and  
territories

**\*33.** The territorial limits of each of the provinces and territories described in paragraphs 31(b) and (c) shall remain as they were at the commencement of this Act, unless and until they are altered in accordance with the provisions of this Act.

*(a) Alteration of Limits of Provinces*

Alteration of  
limits after  
consultation  
and with  
consent

**\*37.** The Parliament of Canada may from time to time, after consultation among the First Ministers of the Canadian federation at a meeting duly constituted for that purpose, and with the express consent of the legislature of any province affected thereby, increase, diminish or otherwise alter the territorial limits of any such province upon such terms as may be agreed to by that legislature, and may, after the like consultation and with the like consent, make provision respecting the effect and operation of any such increase, diminution or other alteration of territorial limits in relation to any province affected thereby.

**31.** New. This section describes the Canadian federation as being composed of the federal authority (the Parliament and government of Canada), the provincial authorities and the territories. (See also s. 2 of the Bill and the original declaration of union set out in the present ss. 3 and 4.)

**32.** New. This section would make it clear that Canada includes some territory that is not included in any province or territory, such as territory under the territorial waters of Canada.

**33.** This section is new but derives from the present ss. 6 and 7. It would continue present provincial and territorial limits until such time as they are changed by law.

**37-40.** These designated provisions relate to the alteration of the limits of provinces and territories, the laws for the territories and the creation of new provinces. They derive from the *British North America Act, 1871* (B.N.A. Act, 1871). (For coming into effect, see s. 125 and the Introduction hereto, categories 4 and 5.)

**37.** This section would modify s. 3 of the B.N.A. Act, 1871 by requiring the federal authority to call a meeting of first ministers for consultation prior to altering provincial territorial limits. At present, only the consent of the province affected is required.

*(b) Laws for Territories*

Territories:  
laws and  
alterations of  
limits

**\*38.** The Parliament of Canada may from time to time make provision for the administration, peace, order and good government of any territory for the time being not included in any province, and for the increase, diminution or other alteration of its territorial limits.

*(c) New Provinces*

Establishment  
and provision  
for laws

**\*39.** The Parliament of Canada may from time to time, after consultation among the First Ministers of the Canadian federation at a meeting duly constituted for that purpose, establish a new province in any territory for the time being forming part of Canada but not included in any other province, and may, at the time of such establishment, make provision for the constitution and administration of that province as a constituent element of the Canadian federation, for the passing of laws for its peace, order and good government and for its due representation in the Parliament of Canada.

Laws establish-  
ing new  
province not to  
be altered

**\*40.** Except as provided in section 37 and in accordance with the procedure for the amendment of the Constitution of Canada, it shall not be competent for the Parliament of Canada to alter the provisions of any Act establishing a new province.

*(c) Seats of Provincial Governments*

Seats of  
provincial  
governments

**\*87.** Until the legislature of any province otherwise directs with respect to that province, the seats of government of the provinces shall be as follows: of Ontario, the City of Toronto; of Quebec, the City of Quebec; of Nova Scotia, the City of Halifax; of New Brunswick, the City of Fredericton; of Manitoba, the City of Winnipeg; of British Columbia, the City of Victoria; of Prince Edward Island, the City of Charlottetown; of Saskatchewan, the City of Regina; of Alberta, the City of Edmonton; and of Newfoundland, the City of St. John's.

**38.** This section is essentially s. 4 of the B.N.A. Act, 1871 modified to provide expressly for the alteration of the territorial limits of any particular territory.

**39.** This section would modify s. 2 of the B.N.A. Act, 1871 by requiring the federal authority to call a meeting of first ministers for consultation prior to creating a new province.

**40.** This section is essentially s. 6 of the B.N.A. Act, 1871 with technical modifications. It would limit federal amendment of provincial constitutions.

**87.** This section names as provincial capitals the present capitals. It would extend the present s. 68, which applies by its terms only to the original four provinces, to all provinces and would modify it so as to require the legislature, rather than the provincial government, to approve a change of capital.

Designated provisions: approval of additional measures to be taken when agreed

**125.** The enactment of this Act by the Parliament of Canada does not extend to any following provision (in this Part referred to as a "designated provision") set out in Part I of this Act, namely:

- (a) section 31,
- (b) section 33,
- (c) sections 35 to 40,
- (d) sections 79 to 95,
- (e) sections 97 to 99,
- (f) section 120, and
- (g) sections 121 to 123;

and the inclusion in this Act of any designated provision does not constitute an assertion by the Parliament of Canada of authority to enact any such provision; but in order that effect may be given as soon as may be to each such designated provision as part of the Constitution of Canada, it is hereby declared and directed that, on and after the commencement of this Act and by virtue of its enactment by the Parliament of Canada, both Houses of the Parliament of Canada shall be deemed to have approved of resolutions for the amendment of the Constitution of Canada in the form and to the effect of each of those provisions, each of which resolutions may be taken up and dealt with, either severally or in combination with any other or others of them, by action as on a joint address or by proclamation, as the case may be, as and when it or they may lawfully be so taken up and dealt with in accordance with the procedure for such amendment then recognized by accepted usage, if there is then no procedure for that purpose expressly provided for by the Constitution of Canada, or in accordance with the procedure for that purpose expressly so provided for, if there is then such a procedure.

Amendment of designated provisions not precluded

**126.** Nothing in section 125 shall be construed as precluding the amendment of any designated provision, including, but without limiting the generality of that expression, any designated provision set out in sections 91 to 95, before such time as any resolution with respect thereto that is deemed by section 125 to have been approved by both Houses of the Parliament of Canada is taken up and dealt with as provided in that section.

**125.** This section provides for the coming into effect of the designated provisions. (See the Introduction hereto, categories 4 and 5.)

**126.** This section emphasizes the possibility of amendment to any designated section before it is entrenched pursuant to s. 125.

## REGINA PREMIERS' CONFERENCE (1978)

The Premiers agreed to advance the 1976 consensus which included a consensus regarding the creation of new provinces.

Premiers are concerned that section 32 of the Constitutional Amendment Bill is an attempt by the federal government to acquire from the provinces jurisdiction over offshore territories and resources.

(Communiqué)

## LAMONTAGNE/MACGUIGAN REPORT (OCTOBER 1978)

No proposal

## CONSTITUTIONAL CONFERENCE (1978)

NOTE: The source of each extract is shown at the end in brackets.

. . .

### Conclusions

In summary British Columbia is clearly one of Canada's major distinct regions. The intermingling of geography, history, demography and economics have resulted in the emergence of a Pacific region that is large and growing, and one whose unique circumstances require effective expression at the national level. It is only through full and direct representation on federal institutions that the natural barriers to integration of British Columbia into the national mosaic can be offset. Unless more appropriate or restructured central government institutions for expression of Pacific regional interests are put in place, the traditional sense of alienation from the rest of Canada felt by British Columbians will not be overcome and Canada, and British Columbia, will be the worse because of it.

(Page 26 from "British Columbia's Constitutional Proposals, Paper No. 2 - British Columbia: Canada's Pacific Region." For a more complete analysis see full text available from the CICS.)



## FEDERAL-PROVINCIAL CONSULTATION



#### XIV. FEDERAL-PROVINCIAL CONSULTATION

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B.N.A. ACT

No reference

VICTORIA CHARTER (1971)

## PART VIII

## FEDERAL-PROVINCIAL CONSULTATION

Art. 48. A Conference composed of the Prime Minister of Canada and the First Ministers of the Provinces shall be called by the Prime Minister of Canada at least once a year unless, in any year, a majority of those composing the Conference decide that it shall not be held.

## SPECIAL JOINT COMMITTEE ON THE CONSTITUTION (1972)

### *Chapter 21—Intergovernmental Relations*

59. More communication and fuller cooperation among all levels of government are imperative needs. The achievement of these ends involves the improvement and simplification of the means of liaison and, where necessary, the creation of new mechanisms.
60. The Constitution should provide for a Federal-Provincial Conference of First Ministers to be called by the Prime Minister of Canada at least once a year unless in any year a majority of the First Ministers decide to dispense with the Conference.
61. The Federal Government should appoint a Minister of State for Intergovernmental Affairs to respond to the political challenges and opportunities resulting from closer intergovernmental relationships.
62. A permanent Federal-Provincial secretariat for intergovernmental relations should be established.
63. A tri-level conference among Federal, Provincial and Municipal governments should be called at least once a year.

## DRAFT PROCLAMATION (1976)

### **Part VI**

#### **Federal-Provincial Agreements**

**Art. 40 (1)** In order to ensure a greater harmony of action by governments, and especially in order to reduce the possibility of action that could adversely affect the preservation and development in Canada of the French language and the culture based on it, the Government of Canada and the Governments of the Provinces or of any one or more of the Provinces may, within the limits of the powers otherwise accorded to each of them respectively by law, enter into agreements with one another concerning the manner of exercise of such powers, particularly in the fields of immigration, communications and social policy.

(2) Nothing in this Article shall be held to limit or restrict any authority conferred either before or after the coming into force of this Proclamation upon the Government of Canada or the Government of a Province to enter into agreements within the limits of the powers otherwise accorded to it by law.

## PREMIERS' CONFERENCES (1976)

The Premiers unanimously agreed that a conference composed of the eleven First Ministers of Canada should be held at least once a year as a constitutional requirement .  
(Extract from letter of October 14, 1976 from the Premier of Alberta to the Prime Minister of Canada)

## BRITISH COLUMBIA PAPER ON THE CONSTITUTION OF CANADA (NOV 1976)

### **(c) Representation on federal bodies—**

There are at the present time a number of federal bodies which have a profound effect in establishing national policy but which are little more than national government institutions rather than being genuinely federal in nature. The following are some, but not all, such institutions:

- Canadian Transport Commission.
- Canadian Radio and Television Commission.
- Canadian Development Corporation.
- Canadian Broadcasting Corporation.
- Bank of Canada.

The decisions which these federal bodies make have a profound effect on the development of the country as a whole and upon provincial priorities. The Bank of Canada is a good example. The preamble of the *Bank of Canada Act* states that "it is desirable to establish a central bank in Canada to regulate credit and currency in the best interests of the economic life of the nation . . . and generally to promote the economic and financial welfare of the Dominion". With a mandate to dictate monetary policy for the country as a whole, one would expect some means by which the Provincial Governments could bring their points of view to bear on the decision-making process.

British Columbia proposes, therefore, that the Board of Directors of the Bank of Canada, and the governing body of other significant federal boards and commissions, be appointed by a process involving Provincial Governments as well as the Government of Canada.

(Page 7 from November 1976 British Columbia paper "What is British Columbia's Position on the Constitution of Canada")

DRAFT RESOLUTION (1977)

PART V - FEDERAL-PROVINCIAL CONSULTATION

- Art. 23      A conference composed of the Prime Minister of Canada and the First Ministers of the Provinces shall be called by the Prime Minister of Canada at least once a year unless, in any year, a majority of those composing the conference decide that it shall not be held.
- Art. 24      Before the Parliament of Canada may establish any new province in territories forming part of Canada, the question of the establishment of such province shall be placed on the agenda of a conference composed of the Prime Minister of Canada and the First Ministers of the Provinces for discussion by them.

Art. 25        Before the Parliament of Canada may exercise its authority under section 92(10)(c) of the British North America Act, 1867 to declare any work or undertaking within a province to be for the general advantage of Canada or for the advantage of two or more provinces, the Government of Canada shall consult with the Government of the Province or Provinces in which the work or undertaking is located.

STATEMENT BY PREMIER OF ONTARIO TO TASK FORCE ON  
ON CANADIAN UNITY (NOVEMBER 1977)

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. . . AS LONG AGO AS 1971, I ARGUED FOR THE ESTABLISHMENT OF A JOINT ECONOMIC COMMITTEE, AN IDEA WHICH HAS BEEN ADVANCED FOR SOME TIME IN CANADA, AND I REPEAT MY ADVOCACY TODAY. WHILE THE IDEA IS OLD, THE IMPLEMENTATION OF IT WOULD BE RADICALLY NEW. A MEANS FOR THE ELEVEN LEGISLATURES AND GOVERNMENTS OF THIS COUNTRY TO ACT TOGETHER IN A SYSTEMATIC AND CONCERTED FASHION ON OUR CRITICAL ECONOMIC PROBLEMS IS LONG OVERDUE. ONLY VIA SUCH A MECHANISM WILL WE BE ABLE TO ENSURE THAT ALL THE REGIONAL NEEDS OF THIS COUNTRY ARE FULLY AND

REGULARLY TAKEN INTO ACCOUNT AND THAT THE FEDERAL GOVERNMENT IS AWARE OF THE REGIONAL EFFECTS OF ITS POLICIES,

. . .

-- A STRONG STATEMENT OF THE FEDERAL GOVERNMENT'S RESPONSIBILITIES TO COORDINATE ECONOMIC AND FISCAL MATTERS WITH THE PROVINCES,

. . .

-- THE ESTABLISHMENT OF NEW NATIONAL INSTITUTIONS, OR THE REFORM OF EXISTING ONES SUCH AS THE SENATE AND FEDERAL AGENCIES, BOARDS AND COMMISSIONS, TO ALLOW FOR THE FULLER EXPRESSION OF REGIONAL INTERESTS, FOR THE RESOLUTION OF INTERGOVERNMENTAL CONFLICTS, AND TO SERVE AS POLITICAL GUARDIANS OF THE INTEGRITY OF THE FEDERAL SYSTEM.

. . .

## BILL C-60 (1978)

### X FEDERAL-PROVINCIAL CONSULTATION AND COMMITMENTS

Conference of  
First Ministers  
to be convened  
at least  
annually

\*97. (1) A conference composed of the Prime Minister of Canada and the First Ministers of the provinces shall be convened by the Prime Minister of Canada at least once in every year unless, in any year, a majority of those composing the conference decide that it shall not be held.

97-99. These designated sections introduce new requirements relating to federal-provincial consultation and commitments. (For coming into effect, see s. 125 and the Introduction hereto, category 4.)

97. A conference of First Ministers is to be convened annually.

Agenda of  
conference

**\*(2)** The agenda of any conference convened pursuant to subsection (1) shall be decided by those composing the conference.

Requirement to  
consult with  
respect to use of  
declaratory  
power of  
Parliament

**\*98.** Before the Parliament of Canada may exercise its legislative authority under the Constitution of Canada to declare any work, although wholly situate within a province, to be for the general advantage of Canada or for the advantage of two or more of the provinces, the government of Canada shall consult with the government of the province or the governments of each of the provinces in which the work is situate.

Commitments  
by Parliament  
to be capable of  
being made  
constitutionally  
binding on  
Canada

**\*99.** Where authority is conferred or provided by any Act of the Parliament of Canada for the payment, otherwise than pursuant to an agreement or other arrangement having the force of a binding contractual obligation, of any public money of Canada to or to the use of any institution of government of any province or territory of Canada subject to such terms and conditions, if any, as may be contained in or provided for by that Act, the authority for such payment, if expressly stated in that Act to create an obligation on Canada to which this section shall apply, shall, for the period of the subsistence of the authority and subject to those terms and conditions, if any, constitute an obligation accordingly by which Canada shall be bound and to which Canada shall be committed pursuant to the Constitution of Canada, and it shall not be competent for the Parliament of Canada to terminate or alter any such obligation except as one by which Canada is so bound and to which it is so committed.

Designated  
provisions:  
approval of  
additional  
measures to be  
taken when  
agreed

**125.** The enactment of this Act by the Parliament of Canada does not extend to any following provision (in this Part referred to as a "designated provision") set out in Part I of this Act, namely:

- (a) section 31,
- (b) section 33,
- (c) sections 35 to 40,
- (d) sections 79 to 95,
- (e) sections 97 to 99,
- (f) section 120, and
- (g) sections 121 to 123;

**98.** Before Parliament exercises its powers under the present s. 92, head 10(c) to declare a work to be for the general advantage of Canada, (i.e. assumes jurisdiction over the work) there must be consultation with the province or provinces to be affected by the declaration.

**99.** New. Certain commitments by Parliament for the payment of money to provinces may be made constitutionally binding and not capable of being abrogated by Parliament.

**125.** This section provides for the coming into effect of the designated provisions. (See the Introduction hereto, categories 4 and 5.)

and the inclusion in this Act of any designated provision does not constitute an assertion by the Parliament of Canada of authority to enact any such provision; but in order that effect may be given as soon as may be to each such designated provision as part of the Constitution of Canada, it is hereby declared and directed that, on and after the commencement of this Act and by virtue of its enactment by the Parliament of Canada, both Houses of the Parliament of Canada shall be deemed to have approved of resolutions for the amendment of the Constitution of Canada in the form and to the effect of each of those provisions, each of which resolutions may be taken up and dealt with, either severally or in combination with any other or others of them, by action as on a joint address or by proclamation, as the case may be, as and when it or they may lawfully be so taken up and dealt with in accordance with the procedure for such amendment then recognized by accepted usage, if there is then no procedure for that purpose expressly provided for by the Constitution of Canada, or in accordance with the procedure for that purpose expressly so provided for, if there is then such a procedure.

Amendment of  
designated  
provisions not  
precluded

126. Nothing in section 125 shall be construed as precluding the amendment of any designated provision, including, but without limiting the generality of that expression, any designated provision set out in sections 91 to 95, before such time as any resolution with respect thereto that is deemed by section 125 to have been approved by both Houses of the Parliament of Canada is taken up and dealt with as provided in that section.

**126. This section emphasizes the possibility of amendment to any designated section before it is entrenched pursuant to s. 125.**

### REGINA PREMIERS' CONFERENCE (1978)

The Premiers agreed to advance the 1976 consensus which included a consensus regarding an annual Conference of First Ministers. (Communiqué)

## LAMONTAGNE/MACGUIGAN REPORT (OCTOBER 1978)

No proposal

## CONSTITUTIONAL CONFERENCE (1978)

NOTE: The source of each extract is shown at the end in brackets.

British Columbia believes that the Western Premiers' Task Force has been successful in showing in a concrete way the need for improving the adequacy of federal-provincial consultation. The Reports focus on specific areas where the public interest is not properly served because of unnecessary administrative duplication, excessive cost, and poor co-ordination and consultation.

Moreover, it would appear that the Western Premiers' Task Force has been instrumental in having the federal government address these issues in a broader context through its recently promised proposals regarding the duplication of government services.

### *B. Intergovernmental Organization—Proposals for Reform*

In an attempt to overcome many of the difficulties inherent in the existing structures of intergovernmental mechanisms the Province of British Columbia puts forward the following specific proposals.

Intergovernmental relations may be made more effective through a greater structuring of the mechanisms to allow for co-ordination of effort and to avoid the duplication of activities. Set procedures should be outlined for the scheduling and frequency of discussion including the formulation of agendas and the selection of conference chairman. Moreover increased efforts must be made to monitor the outcome of such discussions and agreements.

1. *Conference of First Ministers.* Recognizing the importance of maintaining an effective forum for co-operative policy planning, British Columbia recommends an annual Conference of First Ministers. It is recommended that this Conference be scheduled during a specified period each year. Its purpose would be two-fold. First it would have the responsibility of dealing in a broad perspective with current issues of national importance. Secondly, it would turn attention to long-range planning and priority-setting in policy areas of mutual concern. The agenda for these First Ministers' Conferences should be ratified by First Ministers based upon the recommendation of a permanent committee of officials referred to following.

2. *Supporting Mechanisms.* In order to facilitate planning for and the follow-up to Conferences of First Ministers, federal and provincial governments should establish a permanent *Federal-Provincial Liaison Committee on National Policy*. Such a committee should be composed of one senior official designated by the First Minister of each of the eleven senior governments in Canada. Considerable familiarity with the broad range of policy issues on the part of each committee member would serve to increase the effectiveness of this committee. The Com-

mittee would be responsible for setting the agenda for the First Ministers' Conferences; co-ordination of discussions, reports and preparatory work; the co-ordination of follow-up work and; the monitoring of the progress between conferences on new developments and implementation.

3. *The Role of a Reformed Senate.* In Paper No. 3 "Reform of the Canadian Senate," the Province of British Columbia proposes a comprehensive restructuring of that institution in order to provide a provincial voice in the national law-making process.

We do not consider that such a body would take the place of established federal-provincial consultative procedures. Rather we believe that the existence of such a provincially oriented body would have the effect of encouraging consultation and co-operation between governments at the policy formulation stage to a greater extent than is presently the case. The Government of Canada would be aware of the powers of the reformed Senate and would, we believe, thus be more inclined to seek a federal-provincial understanding at an early stage on matters of significant federal-provincial import. The experience of the Bundesrat of the Federal Republic of Germany supports this view.

We do not believe that the activities of the reformed Senate would abolish the need for First Ministers' Conferences. The value of these conferences lies largely in their ability to provide for regional input into the early stages of the policy-formulation process. This forum also considers many policy decisions which are basically outside of the legislative process and would thus not be considered by a reformed Senate. There are also various areas of legislative activity which are undisputably within federal jurisdiction and yet which have profound impact on the provinces. In these areas a reformed Senate would have only a limited role. First Ministers' Conferences would still address such issues.

### Conclusions

Under any possible division of powers and responsibilities that we may arrive at in the future, there will continue to be broad areas of overlap which must be adjusted by negotiation so as to reach some mutually acceptable approach to matters of joint concern to both levels of jurisdiction.

We appreciate there is developing a reluctance among many people to accept further increases in government activity. The structure of intergovernmental liaison which British Columbia proposes in this paper will not increase the bureaucracy of governments but rather will make existing structures better and more efficient.

It is recognized that, even with best of intentions and the will to co-operate, the adversary relationship which dominates our political life will not be eliminated. The Government of British Columbia does believe, however, that a more orderly structure will make the mechanisms of intergovernmental relations more effective.

(Pages 15 17 from "British Columbia's Constitutional Proposals, Paper No. 5 - Improved Instruments for Federal-Provincial Relations. For a more complete analysis see full text available from the CICS.)

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. . .

23. That provision be made in the Constitution for an annual meeting of First Ministers.

. . .

(Page 24 from Alberta's position paper "Harmony in Diversity: A New Federalism for Canada." For a more complete analysis see full text available from the CICS.)

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. . .

WITH THESE CONCERNS IN MIND, I THINK THAT THERE ARE SEVERAL STEPS THAT WE SHOULD TAKE TO ENSURE A MORE CO-OPERATIVE RELATIONSHIP BETWEEN THE TWO ORDERS OF GOVERNMENT. EACH IS IMPORTANT IN CONTRIBUTING TO THE ESTABLISHMENT OF AN ENVIRONMENT OF INTERGOVERNMENTAL HARMONY AND CO-ORDINATION.

THE FIRST STEP TOWARDS ACHIEVING THIS OBJECTIVE IS THE CLARIFICATION OF THE ROLES AND RESPONSIBILITIES OF THE FEDERAL AND PROVINCIAL GOVERNMENTS.

. . .

. . .

A SECOND STEP IS TO ENSURE THAT THE FEDERAL GOVERNMENT AND THE PROVINCES UNDERTAKE MAJOR POLICY INITIATIVES ONLY AFTER FULL AND MEANINGFUL CONSULTATION HAS TAKEN PLACE. AMONG OTHER CONSIDERATIONS, THIS SHOULD INCLUDE A CAREFUL ASSESSMENT OF THE LOCAL AND NATIONAL IMPLICATIONS OF THE ACTION IN QUESTION.

. . .

IN OUR PARLIAMENTARY SYSTEM, THE AUTHORITATIVE SPOKESMEN FOR GOVERNMENTS ARE FIRST MINISTERS AND OTHER MEMBERS OF CABINET. WHATEVER SOLUTIONS WE CONSIDER MUST FOCUS ON THESE SPOKESMEN.

. . .

THERE ARE SOME SITUATIONS, HOWEVER, WHERE CONSTITUTIONAL PROVISIONS CAN BE DESIGNED AND THESE WOULD BE MY THIRD STEP. AS I MENTIONED THIS MORNING, THE CONSTITUTION SHOULD CONTAIN AN APPROVAL PROCESS FOR THE EXERCISE OF THE GENERAL POWERS OF PARLIAMENT SUCH AS ITS SPENDING POWER IN AREAS OF PROVINCIAL JURISDICTION, AND ITS ABILITY TO DECLARE A PROVINCIAL WORK OR UNDERTAKING TO BE SUBJECT TO FEDERAL JURISDICTION. PROVINCIAL APPROVAL WOULD ENSURE THAT THESE SPECIAL FEDERAL POWERS WOULD BE EXERCISED WITH MUCH GREATER SENSITIVITY TO THEIR SHORT AND LONG-TERM IMPLICATIONS FOR THE PROVINCES.

. . .

THE FOURTH STEP THAT I WOULD PROPOSE TO IMPROVE INTERGOVERNMENTAL RELATIONS IN CANADA IS THAT THE CONSTITUTION REQUIRE AT LEAST TWO MEETINGS OF FIRST MINISTERS ANNUALLY.

. . .

IN ADDITION TO THIS CONSTITUTIONAL PROVISION, I BELIEVE THAT THERE ARE ADMINISTRATIVE MEASURES WHICH CAN BE TAKEN TO PROVIDE US WITH GREATER INCENTIVES AND OPPORTUNITIES FOR CONSENSUS AND DECISION-MAKING. FOR EXAMPLE, WE MIGHT GIVE CONSIDERATION TO A RESTRUCTURED INTERGOVERNMENTAL SECRETARIAT, ALONG THE LINES OF THE GROUP WHICH SERVES THE COUNCIL OF MINISTERS OF EDUCATION, TO ENABLE US TO IMPROVE OUR PREPARATIONS FOR AND FOLLOW-UP FROM INTERGOVERNMENTAL MEETINGS.

. . .

SUCH A SECRETARIAT COULD PLAY A MORE ACTIVE ROLE IN CANVASSING GOVERNMENTS FOR THEIR VIEWS ON THE ISSUES ON A CONFERENCE AGENDA. THESE COULD THEN BE ORGANIZED INTO THE VARIOUS ALTERNATIVES THEY REPRESENT FOR CONSIDERATION BY MINISTERS OR FIRST MINISTERS. THEY COULD ALSO UNDERTAKE TO CO-ORDINATE THE FOLLOW-UP NECESSARY TO ANY DECISIONS TAKEN AT A CONFERENCE. BOTH FUNCTIONS SHOULD CONTRIBUTE TO THE MORE EFFECTIVE PROSECUTION OF OUR INTERGOVERNMENTAL BUSINESS.

. . .

(Pages 2-7 from Ontario paper "Federal-Provincial Relations")



## AMENDMENT FORMULA



XV. AMENDMENT FORMULA

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## B.N.A. ACT

### VI.—DISTRIBUTION OF LEGISLATIVE POWERS.

#### *Powers of the Parliament.*

Legislative  
Authority of  
Parliament of  
Canada.

91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next herein-after enumerated; that is to say,—

1. The amendment from time to time of the Constitution of Canada, except as regards matters coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the provinces, or as regards rights or privileges by this or any other Constitutional Act granted or secured to the Legislature or the Government of a province, or to any class of persons with respect to schools or as regards the use of the English or the French language or as regards the requirements that there shall be a session of the Parliament of Canada at least once each year, and that no House of Commons shall continue for more than five years from the day of the return of the Writs for choosing the House: provided, however, that a House of Commons may in time of real or apprehended war, invasion or insurrection be continued by the Parliament of Canada if such continuation is not opposed by the votes of more than one-third of the members of such House. (39)

#### *Exclusive Powers of Provincial Legislatures.*

92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subject next herein-after enumerated; that is to say,—

Subjects of  
exclusive  
Provincial  
Legislation.

1. The Amendment from Time to Time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the Office of Lieutenant Governor.

## FULTON - FAVREAU AMENDMENT FORMULA (1964)

### APPENDIX 3

#### AN ACT TO PROVIDE FOR THE AMENDMENT IN CANADA OF THE CONSTITUTION OF CANADA

[October 30, 1964.]

WHEREAS Canada has requested, and consented to, the enactment of an Act of the Parliament of the United Kingdom in the terms hereinafter set forth, and the Senate and House of Commons of Canada in Parliament assembled have submitted Addresses to Her Majesty praying that Her Majesty may graciously be pleased to cause a Bill to be laid before the Parliament of the United Kingdom for that purpose:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

#### PART I

##### POWER TO AMEND THE CONSTITUTION OF CANADA

1. Subject to this Part, the Parliament of Canada may make laws repealing, amending or re-enacting any provision of the Constitution of Canada.

2. No law made under the authority of this Part affecting any provision of this Act or section 51A of the British North America Act, 1867, or affecting any provision of the Constitution of Canada relating to

- (a) the powers of the legislature of a province to make laws,
- (b) the rights or privileges granted or secured by the Constitution of Canada to the legislature or the government of a province,
- (c) the assets or property of a province, or
- (d) the use of the English or French language,

shall come into force unless it is concurred in by the legislatures of all the provinces.

3. (1) No law made under the authority of this Part affecting any provision of the Constitution of Canada that refers to one or more, but not all, of the provinces, shall come into force unless it is concurred in by the legislature of every province to which the provision refers.

(2) Section 2 of this Act does not extend to any provision of the Constitution of Canada referred to in subsection (1) of this section.

4. (1) No law made under the authority of this Part affecting any provision of the Constitution of Canada relating to education in any province other than Newfoundland shall come into force unless it is concurred in by the legislatures of all the provinces other than Newfoundland.

(2) No law made under the authority of this Part affecting any provision of the Constitution of Canada relating to education in the province of Newfoundland shall come into force unless it is concurred in by the legislature of the province of Newfoundland.

(3) Sections 2 and 3 of this Act do not extend to any provision of the Constitution of Canada referred to in subsection (1) or (2) of this section

5. No law made under the authority of this Part affecting any provision of the Constitution of Canada not coming within section 2, 3 or 4 of this Act shall come into force unless it is concurred in by the legislatures of at least two-thirds of the provinces representing at least fifty per cent of the population of Canada according to the latest general census.

6. Notwithstanding anything in the Constitution of Canada, the Parliament of Canada may exclusively make laws from time to time amending the Constitution of Canada in relation to the executive Government of Canada, and the Senate and House of Commons, except as regards

- (a) the functions of the Queen and the Governor General in relation to the Parliament or Government of Canada;
- (b) the requirements of the Constitution of Canada respecting a yearly session of Parliament;
- (c) the maximum period fixed by the Constitution of Canada for the duration of the House of Commons, except that the Parliament of Canada may, in time of real or apprehended war, invasion or insurrection, continue a House of Commons beyond such maximum period, if such continuation is not opposed by the votes of more than one-third of the members of such House;
- (d) the number of members by which a province is entitled to be represented in the Senate;

- (e) the residence qualifications of Senators and the requirements of the Constitution of Canada for the summoning of persons to the Senate by the Governor General in the Queen's name;
- (f) the right of a province to a number of members in the House of Commons not less than the number of Senators representing such province;
- (g) the principles of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada; and
- (h) the use of the English or French language.

7. Notwithstanding anything in the Constitution of Canada, in each province the legislature may exclusively make laws in relation to the amendment from time to time of the Constitution of the province, except as regards the office of Lieutenant-Governor.

8. Any law to repeal, amend or re-enact any provision of the Constitution of Canada that is not authorized to be made either by the Parliament of Canada under the authority of section 6 of this Act or by the legislature of a province under the authority of section 7 of this Act is subject to the provisions of sections 1 to 5 of this Act.

9. Nothing in this Part diminishes any power of the Parliament of Canada or of the legislature of a province, existing at the coming into force of this Act, to make laws in relation to any matter.

10. No Act of the Parliament of the United Kingdom passed after the coming into force of this Act shall extend or be deemed to extend to Canada or to any province or territory of Canada as part of the law thereof.

11. Without limiting the meaning of the expression "Constitution of Canada", in this Part that expression includes the following enactments and any order, rule or regulation thereunder, namely,

- (a) the British North America Acts, 1867 to 1964;
- (b) the Manitoba Act, 1870;
- (c) the Parliament of Canada Act, 1875;
- (d) the Canadian Speaker (Appointment of Deputy) Act, 1895, Session 2;
- (e) the Alberta Act;
- (f) the Saskatchewan Act;
- (g) the Statute of Westminster, 1931, in so far as it is part of the law of Canada; and
- (h) this Act.

## PART II

## BRITISH NORTH AMERICA ACT, 1867, AMENDED

12. Class 1 of section 91 of the British North America Act, 1867, as enacted by the British North America (No. 2) Act, 1949, and class 1 of section 92 of the British North America Act, 1867, are repealed.

13. The British North America Act, 1867, is amended by renumbering section 94A thereof as 94B and by adding thereto, immediately after section 94 thereof, the following heading and section:

*Delegation of Legislative Authority*

"94A. (1) Notwithstanding anything in this or in any other Act, the Parliament of Canada may make laws in relation to any matters coming within the classes of subjects enumerated in classes (6), (10), (13) and (16) of section 92 of this Act, but no statute enacted under the authority of this subsection shall have effect in any province unless the legislature of that province has consented to the operation of such a statute in that province.

(2) The Parliament of Canada shall not have authority to enact a statute under subsection (1) of this section unless

- (a) prior to the enactment thereof the legislatures of at least four of the provinces have consented to the operation of such a statute as provided in that subsection, or
- (b) it is declared by the Parliament of Canada that the Government of Canada has consulted with the governments of all the provinces, and that the enactment of the statute is of concern to fewer than four of the provinces and the provinces so declared to be concerned have under the authority of their legislatures consented to the enactment of such a statute.

(3) Notwithstanding anything in this or in any other Act, the legislature of a province may make laws in the province in relation to any matter coming within the legislative jurisdiction of the Parliament of Canada.

(4) No statute enacted by a province under the authority of subsection (3) of this section shall have effect unless

- (a) prior to the enactment thereof the Parliament of Canada has consented to the enactment of such a statute by the legislature of that province, and
- (b) a similar statute has under the authority of subsection (3) of this section been enacted by the legislatures of at least three other provinces.

(5) The Parliament of Canada or the legislature of a province may make laws for the imposition of punishment by fine, penalty or imprisonment for enforcing any law made by it under the authority of this section.

(6) A consent given under this section may at any time be revoked, and

(a) if a consent given under subsection (1) or (2) of this section is revoked, any law made by the Parliament of Canada to which such consent relates that is operative in the province in which the consent is revoked shall thereupon cease to have effect in that province, but the revocation of the consent does not affect the operation of that law in any other province, and

(b) if a consent given under subsection (4) of this section is revoked, any law made by the legislature of a province to which the consent relates shall thereupon cease to have effect.

(7) The Parliament of Canada may repeal any law made by it under the authority of this section, in so far as it is part of the law of one or more provinces, but if any repeal under the authority of this subsection does not relate to all of the provinces in which that law is operative, the repeal does not affect the operation of that law in any province to which the repeal does not relate.

(8) The legislature of a province may repeal any law made by it under the authority of this section, but the repeal under the authority of this subsection of any law does not affect the operation in any other province of any law enacted by that province under the authority of this section."

### PART III

#### FRENCH VERSION

14. The French version of this Act set forth in the Schedule shall form part of this Act.

### PART IV

#### CITATION AND COMMENCEMENT

15. This Act may be cited as the *Constitution of Canada Amendment Act*.

16. This Act shall come into force on ..... day of .....

VICTORIA CHARTER (1971)

## PART IX

## AMENDMENTS TO THE CONSTITUTION

Art. 49. Amendments to the Constitution of Canada may from time to time be made by proclamation issued by the Governor General under the Great Seal of Canada when so authorized by resolutions of the Senate and House of Commons and of the Legislative Assemblies of at least a majority of the Provinces that includes

- (1) every Province that at any time before the issue of such proclamation had, according to any previous general census, a population of at least twenty-five per cent of the population of Canada;
- (2) at least two of the Atlantic Provinces;
- (3) at least two of the Western Provinces that have, according to the then latest general census, combined populations of at least fifty per cent of the population of all the Western Provinces.

Art. 50. Amendments to the Constitution of Canada in relation to any provision that applies to one or more, but not all, of the Provinces may from time to time be made by proclamation issued by the Governor General under the Great Seal of Canada when so authorized by resolutions of the Senate and House of Commons and of the Legislative Assembly of each Province to which an amendment applies.

Art. 51. An amendment may be made by proclamation under Article 49 or 50 without a resolution of the Senate authorizing the issue of the proclamation if within ninety days of the passage of a resolution by the House of Commons authorizing its issue the Senate has not passed such a resolution and at any time after the expiration of the ninety days the House of Commons again passes the resolution, but any period when Parliament is prorogued or dissolved shall not be counted in computing the ninety days.

Art. 52. The following rules apply to the procedures for amendment described in Articles 49 and 50:

- (1) either of these procedures may be initiated by the Senate or the House of Commons or the Legislative Assembly of a Province;
- (2) a resolution made for the purposes of this Part may be revoked at any time before the issue of a proclamation authorized by it.

Art. 53. The Parliament of Canada may exclusively make laws from time to time amending the Constitution of Canada, in relation to the executive Government of Canada and the Senate and House of Commons.

Art. 54. In each Province the Legislature may exclusively make laws in relation to the amendment from time to time of the Constitution of the Province.

Art. 55. Notwithstanding Articles 53 and 54, the following matters may be amended only in accordance with the procedure in Article 49:

- (1) the office of the Queen, of the Governor General and of the Lieutenant-Governor;
- (2) the requirements of the Constitution of Canada respecting yearly sessions of the Parliament of Canada and the Legislatures;
- (3) the maximum period fixed by the Constitution of Canada for the duration of the House of Commons and the Legislative Assemblies;
- (4) the powers of the Senate;
- (5) the number of members by which a Province is entitled to be represented in the Senate, and the residence qualifications of Senators;
- (6) the right of a Province to a number of members in the House of Commons not less than the number of Senators representing the Province;

- (7) the principles of proportionate representation of the Provinces in the House of Commons prescribed by the Constitution of Canada; and
- (8) except as provided in Article 16, the requirements of this Charter respecting the use of the English or French language.

Art. 56. The procedure prescribed in Article 49 may not be used to make an amendment when there is another provision for making such amendment in the Constitution of Canada, but that procedure may nonetheless be used to amend any provision for amending the Constitution, including this Article, or in making a general consolidation and revision of the Constitution.

Art. 57. In this Part, "Atlantic Provinces" means the Provinces of Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland, and "Western Provinces" means the Provinces of Manitoba, British Columbia, Saskatchewan and Alberta.

## SPECIAL COMMITTEE ON THE CONSTITUTION (1972)

### *Chapter 5—Amendments to the Constitution*

4. The formula for amending the Constitution should be that contained in the Victoria Charter of June 1971, which requires the agreement of the Federal Parliament and a majority of the Provincial Legislatures, including those of:

- (a) every province which at any time has contained twenty-five per cent of the population of Canada;

- (b) at least two Atlantic Provinces;

- (c) at least two Western Provinces that have a combined population of at least fifty percent of the population of all the Western Provinces.

## DRAFT PROCLAMATION (1976)

### Part I

#### Amendments to the Constitution

**Art. 1** Amendments to the Constitution of Canada may from time to time be made by Proclamation issued by the Governor General under the Great Seal of Canada when so authorized by resolutions of the Senate and the House of Commons and of the Legislative Assemblies of at least a majority of the Provinces that includes:

- (1) every Province that at any time before the issue of such Proclamation had, according to any previous general census, a population of at least twenty-five per cent of the population of Canada;
- (2) at least two of the Atlantic Provinces;
- (3) at least two of the Western Provinces that have, according to the then latest general census, combined populations of at least fifty per cent of the population of all the Western Provinces.

**Art. 2** Amendments to the Constitution of Canada in relation to any provision that applies to one or more, but not all, of the Provinces may from time to time be made by Proclamation issued by the Governor General under the Great Seal of Canada when so authorized by resolutions of the Senate and House of Commons and of the Legislative Assembly of each Province to which an amendment applies.

**Art. 3** An amendment may be made by Proclamation under Articles 1 or 2 without a resolution of the Senate authorizing the issue of the Proclamation if within ninety days of the passage of a resolution by the House of Commons authorizing its issue the Senate has not passed such a resolution and at any time after the expiration of the ninety days the House of Commons again passes the resolution, but any period when Parliament is prorogued or dissolved shall not be counted in computing the ninety days.

**Art. 4** The following rules apply to the procedures for amendment described in Articles 1 and 2:

- (1) either of these procedures may be initiated by the Senate or the House of Commons or the Legislative Assembly of a Province;
- (2) a resolution made for the purposes of this Part may be revoked at any time before the issue of a Proclamation authorized by it.

**Art. 5** The procedures prescribed in Articles 1 and 2 may not be used to make an amendment when there is another provision for making such amendment in the Constitution of Canada, but the procedure in Article 1 may nonetheless be used to amend any provision for amending the Constitution, including this Article, or in making a general consolidation and revision of the Constitution.

**Art. 6** In this Part "Atlantic Provinces" means the Provinces of Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland, and "Western Provinces" means the Provinces of Manitoba, British Columbia, Saskatchewan and Alberta.

**Art. 7** The enactments set out in the Schedule shall continue as law in Canada and as such shall, together with this Proclamation and any Proclamation subsequently issued under this Part, collectively be known as the Constitution of Canada, and amendments thereto shall henceforth be made only according to the authority contained therein.

## PREMIERS' CONFERENCES (1976)

### Amending Formula

Considerable time was spent on this important subject and the unanimous agreement of the provinces was not secured on a specific formula. Eight provinces agreed to the amending formula as drafted in Victoria in 1971 and as proposed by you in your draft proclamation. British Columbia wishes to have the Victoria Formula modified to reflect its view that British Columbia should be treated as a distinct entity with its own separate veto. In this sense it would be in the same position as Ontario and Quebec. Alberta held to the view that a constitutional amending formula should not permit an amendment that would take away rights, proprietary interests and jurisdiction from any province without the concurrence of that province. In this regard, Alberta was referring to matters arising under Section 92, 93 and 109 of the *British North America Act*. (Extract from letter of October 14, 1976 from the Premier of Alberta to the Prime Minister of Canada)

## BRITISH COLUMBIA PAPER ON THE CONSTITUTION OF CANADA (NOV 1976)

### THE AMENDING FORMULA

In order to reflect today's realities, British Columbia believes that the amending formula for our Constitution ought to reflect the importance of British Columbia and the rest of Western Canada in the Canadian Confederation. It rejects the amending formula contained in the *Victoria Charter* as not properly reflecting those realities. Instead it proposes that British Columbia be treated as a separate region.

The statistics previously set out clearly show that the weight that ought to be given in an amending formula to Western Canada should be approximately one third of the country as a whole. The five-region concept would do this for it would require the approval of each of Ontario, Quebec, two of the three Prairie Provinces, two of the four

Atlantic Provinces, and British Columbia for constitutional amendments. The five-region proposal would give the West two of six voices in matters involving constitutional change. Two of six is a reasonable reflection of the importance of the West in today's Canada. On the other hand, the *Victoria Charter* amending formula does not recognize the emergence of the West. It would give the whole of Western Canada only one voice out of five.

British Columbia's proposal on the amending formula represents a compromise point of view to the several amending formula proposals put forward. On the one hand, Alberta proposes a rigid amending formula that would require the unanimous consent of all 11 governments to constitutional change diminishing provincial rights, whereas, on the other hand, the *Victoria Charter* amending formula would give an effective voice to only four provinces, or groups of provinces, and the Federal Government. The British Columbia proposal provides more flexibility than the Alberta proposal and yet retains a measure of stability from frequent change, necessary to a viable Constitution.

Moreover, the regional concept is more able to reflect the strengths and weaknesses of the country, and the various points of view that ought to be brought to bear on the question of constitutional change, than is a purely provincial viewpoint. Finally, the measure of agreement necessary under the five-region concept would approximate the measure of agreement necessary in other federal states. For example, in the United States, three quarters of the states must agree.

The amending formula in any constitution must be a happy balance of flexibility so as to permit the constitution to keep abreast with contemporary needs and yet be sufficiently stable and fixed to provide some measure of constitutional certainty. British Columbia's proposal seeks to strike that balance.

(Page 5 from November 1976 British Columbia paper "What is British Columbia's Position on the Constitution of Canada")

## DRAFT RESOLUTION (1977)

### PART I - AMENDMENTS TO THE CONSTITUTION

Art. 1 Amendments to the Constitution of Canada may be made from time to time by proclamation issued by the Governor General under the Great Seal of Canada when so authorized by resolution of the Senate and House of Commons and of the Legislative Assemblies of at least a majority of the provinces that includes:

- (1) every province that at any time before the issue of such Proclamation had, according to any previous general census, a population of at least 25 per cent of the population of Canada;
- (2) two or more of the Atlantic provinces; and
- (3) two or more of the Western provinces that have, according to the then latest general census, combined populations of at least 50 per cent of the population of all the Western provinces.

Art. 2 Notwithstanding paragraph (3) of Article 1, when the Legislative Assemblies of each of the Western provinces have, either before or after the coming into force of this Part, by resolution so authorized, that paragraph shall read as follows:

"(3) two or more of the Western provinces."

Art. 3 Amendments to the Constitution of Canada in relation to any provision that applies to one or more, but not all, of the provinces may be made from time to time by proclamation issued by the Governor General under

the Great Seal of Canada when so authorized by resolutions of the Senate and House of Commons and of the Legislative Assembly of each province to which such amendments apply.

**Art. 4** An amendment may be made by proclamation under Article 1 or Article 3 without a resolution of the Senate authorizing the issue of the proclamation if within 90 days of the passage by the House of Commons of a resolution authorizing its issue the Senate has not passed such a resolution and at any time after the expiration of those 90 days the House of Commons again passes the resolution, but any period when Parliament is prorogued or dissolved shall not be counted in computing those 90 days.

**Art. 5** The following rules apply to the procedures for amendment described in Articles 1 and 3:

- (1) either of such procedures may be initiated by the Senate or House of Commons or the Legislative Assembly of a province; and
- (2) a resolution made for the purposes of this Part may be revoked at any time before the issue of a proclamation authorized by it.

**Art. 6** The Parliament of Canada may exclusively make laws from time to time amending the Constitution of Canada, in relation to the executive government of Canada or the Senate or House of Commons.

Art. 7 In each province the legislature may exclusively make laws in relation to the amendment from time to time of the constitution of the province.

Art. 8 Notwithstanding Articles 6 and 7, amendments to the Constitution of Canada in relation to the following matters may be made only in accordance with the procedure described in Article 1:

- (1) the offices of the Queen, the Governor General or the Lieutenant Governor of a province;
- (2) the requirements of the Constitution of Canada respecting yearly sessions of the Parliament of Canada or the Legislature of a province;
- (3) the maximum period fixed by the Constitution of Canada for the duration of the House of Commons or the Legislative Assembly of a province;
- (4) the powers of the Senate;
- (5) the number of members by which a province is entitled to be represented in the Senate, and the residence qualifications of Senators;
- (6) the right of a province to a number of members in the House of Commons not less than the number of Senators representing the province;

- (7) the principles of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada; and
- (8) the requirements respecting the use of the English or French language.

Art. 9 The procedure described in Article 1 may not be used to make an amendment where there is another provision for making such amendment in the Constitution of Canada, but that procedure may none the less be used to amend any provision for amending the Constitution, including this Article, or in making a general consolidation and revision of the Constitution.

Art. 10 In this Part, "Atlantic provinces" means the provinces of Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland, and "Western provinces" means the provinces of Manitoba, British Columbia, Saskatchewan and Alberta.

Art. 11 Class 1 of section 91 and class 1 of section 92 of the British North America Act, 1867, as amended by the British North America (No. 2) Act, 1949 are repealed on the coming into force of this Part.

. . .

And be it further resolved

That a humble Address be presented to Her Majesty the Queen in the following words:

To the Queen's Most Excellent Majesty:

Most Gracious Sovereign:

We Your Majesty's most dutiful and loyal subjects, the Senate and Commons of Canada in Parliament assembled, humbly approach Your Majesty praying that You may graciously be pleased to cause a measure to be laid before the Parliament of the United Kingdom to be expressed as follows:

"WHEREAS it is in accord with the status of Canada as an independent state that the Canadian people should be able through their chosen representatives to provide for themselves the means by which to alter their own Constitution in all respects.

And whereas hitherto certain amendments to the Constitution of Canada have been made by the Parliament of the United Kingdom at the request and with the consent of Canada;

And whereas a proclamation entitled the "Proclamation respecting the Constitution of Canada" that was approved by the Senate and House of Commons of Canada on the \_\_\_\_ day of \_\_\_\_\_, 19\_\_ to be proclaimed by the Governor General of Canada embodies provisions with respect to the Constitution of Canada and the means whereby it may be amended;

And whereas Canada has requested, and consented to, the enactment of an Act of the Parliament of the United Kingdom to make appropriate provision in connection with the matters aforesaid and the Senate and House of Commons have submitted an Address to Her Majesty praying that a measure be laid before the Parliament of the United Kingdom for that purpose: Be it therefore enacted by the Queen's Most Excellent Majesty .... etc.:

1. When promulgated by the Governor General of Canada, the Proclamation shall, as well in the United Kingdom as in Canada, be recognized as having by virtue of the Proclamation the force of law.
2. No Act of Parliament of the United Kingdom passed after the promulgation of the Proclamation shall extend, or be deemed to extend, to Canada or to any province or territory of Canada as part of its law.

3. As from the promulgation of the Proclamation the enactments mentioned in the Schedule to this Act are, to the extent specified in column 3 of the Schedule, hereby repealed as enactments of the Parliament of the United Kingdom, but without prejudice to any operation which any of those enactments or any law, order, rule, regulation or other instrument made thereunder may continue to have by virtue of the Proclamation.
4. This Act may be cited as the Canada Act, 1977.

BILL C-60 (1978)

No amending formula proposed

REGINA PREMIERS' CONFERENCE (1978)

No amending formula proposed

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## 6. Federal-Provincial Consultation

No matter how clear the distribution of powers may be in a federal system, some overlap of federal and provincial interests and concerns is unavoidable. Their reconciliation depends on two factors: the willingness of governments to co-operate with one another, and central institutions designed so as to encourage this co-operation.

Thus, the reform of existing federal institutions should be so structured to:

- allow for a fuller expression of regional interests as represented by provincial governments;
- respect the accountability of Cabinet to the Commons;
- be directly or indirectly representative of ministers of the Crown; and
- commit each government to respect the outcome of the deliberations.

(Page 7 from Ontario paper "A Restatement of Ontario's Views on Canada and the Constitution")

LAMONTAGNE/MACGUIGAN REPORT (OCTOBER 1978)

No proposal

EXTRACTS FROM HIGHLIGHTS OF FEDERAL STUDY ENTITLED  
 "THE CANADIAN CONSTITUTION AND CONSTITUTIONAL  
 AMENDMENT" - (AUGUST 1978)

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The study suggests that, in addition to the Fulton-Favreau formula and the Victoria amending formula, two alternatives, among others, could be considered:

- The Victoria amending formula combined with an "appeal" to the people through a referendum. For example, a referendum could be held in a region when it vetoes a proposal accepted by the other three regions and by Parliament; and a national referendum could be held if the four regions accepted a proposal and Parliament opposed it.
- The exclusive use of referenda.

The study also draws attention to several possible ways of proposing constitutional amendments as distinct from approving them:

- An amendment could be proposed by Parliament acting alone; by a combination of any four provincial legislatures, to include one from each region or by the legislature(s) of any one region (as defined by the Victoria amending formula).
- The Government's proposed House of the Federation, which would create a new institution for the expression of regional interests, could possibly initiate proposals for constitutional amendment by, say, a two-thirds vote. However, the study says this role would probably supplement rather than substitute for other ways of proposing amendments.
- Amendments might be proposed by popular petition: that is, by a minimum number or percentage of voters.
- The study notes, however, that in the four other federations surveyed, the federal legislature has a key role in proposing constitutional amendments.

The study is being put forward by the Government only as background information to contribute to the discussion of possible alternative amending procedures. No decision has been taken by the Government as to what method it prefers.

. . .

## CONSTITUTIONAL CONFERENCE (1978)

NOTE: The source of each extract is shown at the end in brackets.

### Summary of Proposals

The Government of British Columbia makes the following proposals concerning the process of constitutional amendment in Canada:

- (1) The constitutional amendment process should be one that is *exclusively Canadian*.
- (2) Subject matters of concern to only the provincial legislature should be amendable by the provincial legislatures acting unilaterally.
- (3) Subject matters of concern to only Parliament should be amendable by Parliament acting unilaterally. Careful attention should be focussed on the identification of these matters to exclude some which may be said to be included in this category—for example, the Senate and the Supreme Court of Canada—do not in fact affect only Parliament but rather have a significant impact on the provinces as well.
- (4) Subject matters of concern only to Parliament and some, but not all, of the provincial legislatures should be amendable by those governments concerned.
- (5) Subject matters of concern to Parliament and all the provincial legislatures should be amendable by the affirmative votes of the House of Commons, the Atlantic Region, Quebec, Ontario, the Prairie Region, and British Columbia.
- (6) The forum for aggregating the five regional votes required for constitutional amendments should be the Senate, provided that it is reformed so that its primary purpose is the representation of regional interests at the national level and provided that all Senators are appointed by, and are directly responsible to, provincial governments.
- (7) If the Senate is not reformed along these lines then the forum for aggregating the five regional votes required for constitutional amendments should be the respective provincial legislatures.

In conclusion, the Government of British Columbia believes that the amending formula in any constitution, particularly federal constitutions, must be a happy balance of flexibility and stability—flexibility to permit the constitution to keep abreast of contemporary needs, stability to provide some measure of constitutional certainty to governors and the governed alike. British Columbia's proposals seek to strike that balance.

(Page 18 from "British Columbia's Constitutional Proposals, Paper No. 9 - The Amendment of the Constitution of Canada." For a more complete analysis see full text available from the CICS.)

. . .

24. That an amending formula must reflect the principle that all provinces have equal constitutional status.
25. That an amending formula reflect the principle that existing rights, proprietary interests and jurisdiction of a province cannot be diminished without the consent of that province.

. . .

(Page 25 from Alberta's position paper "Harmony in Diversity: A New Federalism for Canada." For a more complete analysis see full text available from the CICS.)

. . .

ONTARIO WOULD REGARD AN AMENDING FORMULA THAT CALLED FOR "UNANIMOUS PROVINCIAL AGREEMENT" FOR ANY CHANGE TO THE CONSTITUTION AS A RETREAT TO UNREALITY. IT WOULD PERPETUATE THE VIRTUAL IMPOSSIBILITY OF CONSTITUTIONAL CHANGE. IT WOULD MAKE US WARY OF MAKING ANY CONSTITUTIONAL CHANGES.

. . .

AN IMPORTANT FEATURE OF GOVERNMENTAL RELATIONS IN CANADA HAS BEEN AN ATTEMPT TO WORK TOWARD CONSENSUS, BUT TO PROVIDE FOR THE EXPRESSION OF DISTINCT INTERESTS WITHIN THE FEDERATION. I STRONGLY BELIEVE THIS WAS THE APPEAL OF THE AMENDING FORMULA DEVELOPED DURING THE 1968 - 1971 CONSTITUTIONAL REVIEW EXERCISE, DUBBED THE VICTORIA FORMULA.

ONTARIO IS NOT WEDDED TO EVERY DETAIL OF THIS FORMULA, AS LONG AS ITS ESSENTIAL AND FLEXIBLE ELEMENTS ARE RETAINED. HOWEVER, AS THE SENATE-HOUSE COMMITTEE CONCLUDED IN 1972, IT MAY PROVE DIFFICULT TO SUBSTANTIALLY IMPROVE ON THE GENERAL TERMS OF THE VICTORIA FORMULA.

. . .

(Pages 2 and 5 from Ontario paper "Amending Formula")

OTHER



XVI. OTHERA. REVENUES, INTERPROVINCIAL COMMERCE  
AND TAXATION OF PUBLIC LANDS AND  
PROPERTY

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A. REVENUES, INTERPROVINCIAL COMMERCE AND TAXATION OF  
PUBLIC LANDS AND PROPERTY

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B.N.A. ACT

VIII.—REVENUES; DEBTS; ASSETS; TAXATION

**102.** All Duties and Revenues over which the respective Legislatures of Canada, Nova Scotia, and New Brunswick before and at the Union had and have Power of Appropriation, except such Portions thereof as are by this Act reserved to the respective Legislatures of the Provinces, or are raised by them in accordance with the special Powers conferred on them by this Act, shall form One Consolidated Revenue Fund, to be appropriated for the Public Service of Canada in the Manner and subject to the Charges in this Act provided.

Creation of  
Consolidated  
Revenue Fund.

Expenses of  
Collection, etc.

**103.** The Consolidated Revenue Fund of Canada shall be permanently charged with the Costs, Charges, and Expenses incident to the Collection, Management, and Receipt thereof, and the same shall form the First Charge thereon, subject to be reviewed and audited in such Manner as shall be ordered by the Governor General in Council until the Parliament otherwise provides.

Appropriation  
from Time to  
Time.

**106.** Subject to the several Payments by this Act charged on the Consolidated Revenue Fund of Canada, the same shall be appropriated by the Parliament of Canada for the Public Service.

**121.** All Articles of the Growth, Produce, or Manufacture of any one of the Provinces shall, from and after the Union, be admitted free into each of the other Provinces.

Canadian  
Manufactures,  
etc.

**125.** No Lands or Property belonging to Canada or any Province shall be liable to Taxation.

Exemption of  
Public Lands,  
etc.

Provincial  
Consolidated  
Revenue Fund.

**126.** Such Portions of the Duties and Revenues over which the respective Legislatures of Canada, Nova Scotia, and New Brunswick had before the Union Power of Appropriation as are by this Act reserved to the respective Governments or Legislatures of the Provinces, and all Duties and Revenues raised by them in accordance with the special Powers conferred upon them by this Act, shall in each Province form One Consolidated Revenue Fund to be appropriated for the Public Service of the Province.

## BILL C-60 (1978)

### XII REVENUES, INTERPROVINCIAL COMMERCE, AND TAXATION

Revenues to  
form Con-  
solidated  
Revenue Fund  
subject to  
appropriation  
by Parliament  
or legislature

**\*121.** All taxes, imposts and other revenues over which the Parliament of Canada has the power of appropriation shall form one Consolidated Revenue Fund, to be appropriated by the Parliament of Canada for the public purposes of Canada; and all taxes, imposts and other revenues over which the legislature of any province has the power of appropriation shall likewise form one Consolidated Revenue Fund, to be appropriated by the legislature of that province for the public purposes of that province.

Free movement  
of goods within  
Canada

**\*122.** All articles of the growth, produce or manufacture of any one of the provinces shall be admitted free into each of the other provinces.

Exemption of  
public lands or  
property from  
taxation

**\*123.** No lands or property belonging to Canada or any province shall be liable to taxation.

Designated  
provisions:  
approval of  
additional  
measures to be  
taken when  
agreed

**125.** The enactment of this Act by the Parliament of Canada does not extend to any following provision (in this Part referred to as a "designated provision") set out in Part I of this Act, namely:

- (a) section 31,
- (b) section 33,
- (c) sections 35 to 40,
- (d) sections 79 to 95,
- (e) sections 97 to 99,
- (f) section 120, and
- (g) sections 121 to 123;

and the inclusion in this Act of any designated provision does not constitute an assertion by the Parliament of Canada of authority to enact any such provision; but in order that effect may be given as soon as may be to each such designated provision as part of the Constitution of Canada, it is hereby declared and directed that, on and after the commencement of this Act and by virtue of its enactment by the Parliament of Canada, both Houses of the Parliament of Canada shall be deemed to have approved of resolutions for the amendment of the Constitution of Canada in the form and to the effect of

**121.** This section, which would continue the federal and provincial Consolidated Revenue Funds, is a consolidation of the present ss. 102, 106 and 126, modified.

**122.** This section, which provides for the free movement of goods within Canada, is the present s. 121.

**123.** This section, which would exempt public lands and property from taxation, is the present s. 125.

**125.** This section provides for the coming into effect of the designated provisions. (See the Introduction hereto, categories 4 and 5.)

each of those provisions, each of which resolutions may be taken up and dealt with, either severally or in combination with any other or others of them, by action as on a joint address or by proclamation, as the case may be, as and when it or they may lawfully be so taken up and dealt with in accordance with the procedure for such amendment then recognized by accepted usage, if there is then no procedure for that purpose expressly provided for by the Constitution of Canada, or in accordance with the procedure for that purpose expressly so provided for, if there is then such a procedure.

Amendment of  
designated  
provisions not  
precluded

**126.** Nothing in section 125 shall be construed as precluding the amendment of any designated provision, including, but without limiting the generality of that expression, any designated provision set out in sections 91 to 95, before such time as any resolution with respect thereto that is deemed by section 125 to have been approved by both Houses of the Parliament of Canada is taken up and dealt with as provided in that section.

**126.** This section emphasizes the possibility of amendment to any designated section before it is entrenched pursuant to s. 125.

## B. NATIONAL SYMBOLS

### BILL C-60 (1978)

The flag of  
Canada

**34. (1)** The flag of Canada shall be the red and white unifoliate, as heretofore established by law.

Anthem

**(2)** The national anthem of Canada shall be "O Canada", and the royal anthem of Canada shall be "God Save the Queen".

Motto of  
Canada

**(3)** The motto of Canada shall be "*A mari usque ad mare*".

Idem

**(4)** The law of the federal authority in and for Canada may amplify or modify this Act with respect to any of the matters provided for in this section.

**34.** By this new section, the flag, the national and royal anthems and the motto of Canada would become symbols recognized by the Constitution.

















